

**CBP AND ICE: DOES THE CURRENT
ORGANIZATIONAL STRUCTURE BEST SERVE
U.S. HOMELAND SECURITY INTERESTS?
PART II AND III**

HEARING

BEFORE THE

**SUBCOMMITTEE ON MANAGEMENT,
INTERGRATION, AND OVERSIGHT**

OF THE

**COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES**

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**CBP AND ICE: DOES THE CURRENT
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PART II**

Tuesday, November 15, 2005

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON MANAGEMENT,
INTEGRATION, AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to call, at 2:03 p.m., in Room 311, Cannon House Office Building, Hon. Mike Rogers [chairman of the subcommittee] presiding.

Present: Representatives Rogers, Souder, McCaul, Meek, Lofgren, and Jackson-Lee.

Mr. ROGERS. [Presiding.] This meeting of the Subcommittee on Management, Integration, and Oversight of the Committee on Homeland Security is called to order.

We are holding the second hearing today to examine the current organizational structure within the Department of Homeland Security for two major agencies: U.S. Customs and Border Protection, referred to as CBP, which secures our borders and ports of entry; and U.S. Immigration and Customs Enforcement, referred to as ICE, which enforces our immigration and customs laws inside the United States.

I would first like to welcome our distinguished witnesses and thank them for taking the time out of their busy schedules to be with us today.

When the Department of Homeland Security was established in March 2003, it housed two new agencies which were designated CBP and ICE. Both of these agencies were composed of functions from the legacy U.S. Customs Service, the former Immigration and Naturalization Service, and other agencies. The original organization of the Department also included a new Border and Transportation Security Directorate, known as BTS. This office was responsible for overseeing and coordinating the activities of CBP and ICE.

Since 2003, however, many concerns have been expressed about the ability of CBP and ICE to carry out their missions effectively as separate and distinct agencies. Some of these concerns were raised during our first hearing held in March, focusing primarily on coordination, communication, and financial issues. Various proposals have been made to address these problems, including the merger of CBP and ICE.

In January, the Senate Homeland Security and Governmental Affairs Committee held a hearing during which the chairman and ranking member asked the Department's inspector general to assess whether or not there should be a merger of CBP and ICE. As part of this subcommittee's oversight role over the Department's organization, we also will examine the inspector general's assessment, which is being made public today.

We are also pleased to have with us the Assistant Inspector General for Inspections and Special Reviews who will discuss the IG's merger endorsement. We also are pleased to have the new Assistant Secretary for Policy from the Department of Homeland Security in his first appearance before Congress since his confirmation. He will discuss Secretary Chertoff's decision to eliminate the BTS directorate, but not merge CBP and ICE.

I once again want to thank the witnesses for joining us today for this important issue. I now will yield the floor to my friend and colleague from Florida, the ranking member, Mr. Meek, for any statement he may have.

Mr. MEEK. Thank you very much, Mr. Rogers.

I want to thank our witnesses for coming before us. I am pleased to see Mr. Ashbaugh. I know that the inspector general and your office has been working very hard and not only doing outstanding work on monitoring contracts after Hurricane Katrina, but in so many other areas. I admire the dedication of your staff that you bring to oversight.

I also have offered amendments and legislation to provide more funding and authority to the department inspector general's office, but I hope that the committee and the Congress recognize the need to act on these initiatives very soon, especially as it relates to some of the oversight issues in such a large agency.

The report that we are considering today is another example of a thoughtful, thorough piece of work. If you turn on CNN any night, you will hear Lou Dobbs talk about broken borders and homeland insecurity, a major part of which is due to a lack of coordination between Immigrations Customs Enforcement and Custom Border Protection.

Financial separation between these two agencies undermines the morale and also wastes resources and creates competing agendas. For example, your report notes that ICE controls the detention and removal program, which already has a limited amount of detention space, but that competing demand for housing, those arrested by ICE versus CBP, have only worsened the bad space problem.

The two agencies also simply are not coordinating their detention needs as a result of the ability of the department to proceed in removing the volume of aliens apprehended by both ICE and Customs Border Protection.

The subcommittee first considered whether ICE or CBP should be merged back in March. At the time, there seemed to be a steady drumbeat of saying that One Face at the Border was a failed initiative and a dysfunctional relationship between ICE and CBP made us less secure.

Yet Secretary Chertoff had the opportunity to make these things happen in the second stage review and he chose the path of least resistance. He avoided the big job of merging these two organiza-

tions and did what was easy. He eliminated the Border and Transportation Security, BTS, and just made ICE and Customs Border Protection even more difficult as it relates to being able to carry out their mission.

I think what is important here, Mr. Chairman, and also to our witnesses and those that are here, interested parties, is that we work out what is best for America and work out what is best as it relates to strengthening security.

As you know, later on this week there will be consideration, Mr. Under Secretary, of possibly putting before the committee the opportunity to merge both of these departments to make sure that we can streamline as much as possible the enforcement and also execution of both of their goals. I look forward to hearing your testimony on other alternative ways that we could look at this overall agenda between these two agencies.

The Department of Homeland Security, in closing I must add, is still a very new department and also needs the kind of oversight and management that the American people look for to us providing. But we also have to leap forward and make sure that we do what we are supposed to do, when it is time to do it, if it going to save the taxpayers money, and at the same time achieve the goals of protecting the homeland.

Thank you so very much, Mr. Chairman. I yield back the balance of my time.

Mr. ROGERS. I thank the gentleman.

Members are also reminded they can submit opening statements for the record.

We are pleased to have two distinguished panelists with us today on this important topic.

I would like to remind you that your entire statements can also be submitted for the record. We would like to ask you to limit your audible statements to around five minutes so that we can then get on to questions.

The chair now calls the first panelist, recognizing Mr. Robert Ashbaugh, Assistant Inspector General for Inspections and Special Reviews, Department of Homeland Security, for any statement he may have.

Mr. Ashbaugh?

STATEMENT OF ROBERT L. ASHBAUGH

Mr. ASHBAUGH. I would like to start by acknowledging and extending our appreciation to the committee for its continuing oversight and its support of the Office of the Inspector General. There is so much that we have together to work on in this important arena, and we thank you very much for your help and assistance and support to us.

Today, I would like to discuss the organizational interrelationship of ICE and of CBP. As you mentioned, we were asked to do this review and began it in roughly February. During the course of the ensuing several months, we interviewed approximately 600 individuals in 63 CBP and ICE facilities around the country. We interviewed senior border and transportation security officials, ICE and CBP leaders in Washington, and we made a special effort to reach out and talk to the managers in the sector district and port

of entry offices and the employees on the line, along with union representatives and a number of persons outside DHS who had a perspective on this.

We reviewed the budget plans, the performance statistics, the operating procedures, as much of the written record of ICE and CBP activities as we could get, in an effort to attempt to study what started out as a binary question: Should there or should there not be a merger?

Early on, we decided and made a significant effort to try to capture as part of the final report some of the issues and programmatic controversies that we encountered so that at the end of the process, whether or not there was a merger or not, whether or not our recommendation, whatever it might eventually be, was accepted or not, that the report itself would have an underlying value as we moved forward.

In the course of the review, we focused on three issues that seemed to be most important to understanding the structural interrelationships of ICE and CBP. These were the coordination of apprehension, detention and removal efforts; the coordination between interdiction and investigative efforts; and the coordination of intelligence activities.

The first is detention and removal operations. As you know, CBP apprehends illegal aliens, but is dependent upon ICE's detention and removal to transport them, detain them and remove them. ICE also apprehends aliens, in effect competing with CBP for the detention bed space and for the same removal services. Detention bed space is critical. Few illegal aliens are actually removed unless they are detained, so this scarce resource has to be managed and coordinated carefully if both CBP and ICE are to attain their missions. They are so interrelated, yet each by acting unilaterally has the capability to disrupt the operations of the other, yet we found each is developing separate plans for allocating resources without consulting the other. We found that ICE detention was not maintaining parity with CBP apprehensions.

With respect to investigative operations, we found that although CBP often encounters indicators of a crime, it is ICE that is responsible for investigating them. ICE and CBP employees told us of the deteriorating situation in which ICE investigators do not accept as many referrals from CBP as in the past and CBP refers more cases to other law enforcement agencies than in the past. Moreover, CBP is developing its own investigative capabilities to use instead of ICE investigators. We found persistent breaks in the two agencies' relations.

With respect to intelligence activities, we found that CBP and ICE require intelligence regarding illegal aliens, criminal aliens, alien smuggling, drug trafficking, fraudulent travel documents, and import and export violations. They both have a need for a common body of intelligence.

Despite this need, however, the two organizations have separate intelligence structures and products. At the headquarters level, the only significant intelligence coordination effort that we could identify relates to intelligence received from outside agencies. We also found that at the field level, the two organizations have gone their

separate ways and are not coordinating or compiling consolidated intelligence useful across the border.

We heard a surprisingly notable consistency from ICE, from new employees, from old employees from Customs and from INS, all supporting the proposition that there were significant structural impediments to the way they attempted to do their business.

Excuse me. I am not familiar with the red light. Am I okay? Thank you for your forbearance.

We considered three options, and I will try to abbreviate a little bit and skip to the one that was most important, and that was whether or not there should be a merger. The other choice, whether or not to assign the integration responsibility via a direct report to the deputy secretary and the secretary, or to strengthen BTS and give it additional authority and resources to serve as an integrator. Both options we declined to endorse.

We endorse the final option that proposed an elimination of BTS and a merger of CBP and ICE. In our opinion, it was the optimal solution for removing the problems arising from the current organizational structure.

Instead of building an overhead of integrated structures outside of ICE and CBP, we suggested pushing these down into one organization. We felt that in doing this, the time necessary to get operational decisions, the responsibility for accomplishing integration, and the opportunities for informed and accountable choice-making among conflicting priorities would, in our opinion, be improved by merger.

As you know, the secretary declined to adopt the merger. As I indicated earlier, we were determined that this report have value that would last beyond whatever that decision might be.

We included in the report 14 recommendations of areas that we felt needed to be addressed irrespective of whether there was a merger or not a merger. The 14 recommendations are a very formal way of saying to the public and to Congress and to the department that we expect to engage in a dialogue about the activities and the corrective actions or the ways in which the department will address these recommendations.

It is also a commitment on our part that we will continue to oversee, follow up on, and report on our assessment of how those recommendations are being fulfilled and how the issues are being addressed.

Thank you very much. I will be happy to take questions.

[The statement of Mr. Ashbaugh follows:]

PREPARED STATEMENT OF ROBERT L. ASHBAUGH

TUESDAY, NOVEMBER 15, 2005

Good afternoon Mr. Chairman and Members of the Subcommittee. Thank you for the opportunity to join you today to discuss our review of the merits of merging two Department of Homeland Security (DHS) bureaus, Immigration and Customs Enforcement (ICE) and the Bureau for Customs and Border Protection (CBP) and eliminating the directorate to which they report, Border and Transportation Security (BTS).

Impetus for Our Report

In January 2005, the Senate Committee on Homeland Security and Governmental Affairs conducted a hearing to discuss means for improving DHS's effectiveness. Prominent among the topics discussed were recommendations proposed in a Decem-

ber 2004 report by the Heritage Foundation and the Center for Strategic and International Studies, entitled DHS 2.0: *Rethinking the Department of Homeland Security*. During the hearing the Committee Chairman asked our office to assess the merits of the report's recommendation to eliminate BTS and merge CBP and ICE.

In response, we undertook this review, which examined the history of the organizations, the roles and responsibilities assigned to them, and the degree to which they have met their inter-related goals. We interviewed more than 600 individuals from public, private, and non-profit sectors. To obtain a balance of viewpoints, we traveled to 10 cities across the country to talk to employees in 63 CBP and ICE facilities. We met with senior BTS, ICE, and CBP leaders in Washington, DC, program managers, field staff, employees on the line, and stakeholders. We reviewed budget plans, performance statistics, operating procedures, and a large volume of other information pertaining to BTS, CBP, and ICE.

As CBP and ICE were reformations of the former Immigration and Naturalization Service (INS) and the U.S. Customs Service (Customs), we examined whether the problems in operation and integration that we encountered arose from the implementation of the new organizational structure, or whether they were pre-existing conditions carried over from the former agencies. We also considered other factors that may have contributed, such as ICE's funding stream and accounting system difficulties. After weeding out those issues, we concluded that the current organizational arrangement contributed to concerns in at least three major areas: coordination of apprehension and detention and removal efforts, coordination between interdiction and investigative efforts, and coordination of intelligence activities.

Creation of ICE and CBP

Before DHS was created, the Department of Justice's INS was responsible for enforcing the immigration laws, and the Department of the Treasury's U.S. Customs Service had authority for enforcing the customs statutes. The INS was responsible for ensuring effective enforcement of immigration laws from start to finish, including apprehension, border inspection, investigation, and prosecution of violations of immigration law. Likewise, Customs bore responsibility for a full range of customs enforcement activities, including the targeting, inspection, regulation, and investigation of all goods crossing our country's borders.

With the formation of CBP and ICE, the responsibility for customs and immigration enforcement was divided between the two organizations so that each shouldered responsibility for aspects of both customs and immigration enforcement. By the same token, neither agency was given responsibility for the full scope of customs or immigration enforcement activities. CBP received INS and Customs inspections functions and the Border Patrol. INS and Customs investigations and intelligence functions, as well as the INS detention and removal resources, were placed in ICE.

Under the new structure, the organizations depended on each other's assistance to complete enforcement actions. For example, if CBP inspectors interdicted an individual for a customs law violation, the investigation of the matter would have to be turned over to ICE or another law enforcement agency. Similarly, ICE now depended on case referrals from CBP inspectors. For their part, CBP Border Patrol agents had to rely on ICE detention and removal resources to deport the aliens whom they apprehended.

BTS, the entity responsible for integrating the interdependent CBP and ICE activities, was hobbled by inadequate staffing and lack of authorities over CBP and ICE. Consequently, BTS leadership often failed to prevent CBP and ICE from working at cross-purposes, it did not intervene to effectively synchronize CBP's and ICE's operations, and it was slow to resolve conflicts between them. In addition, with a few exceptions, it was unable to facilitate their development of mutually beneficial resource plans and priorities. As a result, the ICE and CBP chains of command pursued their own priorities when allocating resources and developing procedures. Problems with coordination between the two naturally ensued.

Problems in Coordination

A clear institutional barrier marks the division between CBP and ICE. Shortfalls in operational coordination and information sharing have fostered an environment of uncertainty and mistrust between CBP and ICE personnel. What had been collegial relationships between the different enforcement functions within INS and Customs have deteriorated. Employees at both ICE and CBP told us that enforcement units in CBP and ICE suffer from breakdowns in cooperation, competition, and, at times, interference with each other's duties. The problems are most notable in three areas: (1) the coordination of apprehension and detention and removal operations; (2) the coordination of investigative operations; and (3) the coordination of intelligence activities.

Coordination of Apprehension and Detention Removal Operations

Absent a strong integrator, the division of related enforcement functions necessitates separate planning and resource allocation. The organizations' differing priorities and needs, coupled with ICE's funding and accounting problems, have contributed to a resource imbalance between CBP's alien apprehension and ICE's detention and removal programs. CBP grew its apprehension capabilities while ICE did not increase its detention and removal resources. The resultant increase in apprehended illegal aliens has placed an increasing strain on ICE's static detention and removal resources. It also has reduced the impact of CBP's alien apprehension efforts by allowing larger numbers of apprehended aliens to roam freely within the United States pending their immigration hearing, which many never attend. The backlog of immigration hearing absconders is continuing to grow and stood at more than 465,000 at the end of fiscal year (FY) 2004. The drop in the proportion of illegal aliens who are apprehended and removed may inspire more aliens to seek illicit entry into the United States and, in turn, may cause removal rates to spiral downward.

In the past, INS detention and removal resources were detailed to INS apprehending components in order to provide support, such as assistance with transportation, guard duty, and basic processing of aliens. At BTS' instruction, some of this support continues. According to senior CBP staff, however, the level and quality of support has declined. This declining support, combined with ICE's withdrawal of support in other areas, has prompted CBP to divert staff and resources from the functions they are best suited to perform—inspections and patrol work.

Ultimately, ICE's detention and removal functions are governed by appropriations. Improved coordination in resource allocation between CBP and ICE can better align the apprehension rates with the detention and removal services, but the value of the deterrent effect that results from their improved coordination is still limited by the funds available to buy bed space and support removal costs.

Coordination of Investigative Operations

The division of enforcement functions between CBP and ICE has also hampered the coordination of interdiction and investigation efforts. Now that they are in separate organizations, ICE investigators do not accept as many case referrals from CBP inspectors and Border Patrol agents, according to many CBP employees. Some attributed ICE's declining acceptance rate of CBP referrals to the separate chains of command. In the past, when investigators did not respond to a referral, inspectors and Border Patrol agents could appeal up their common chain of command to direct an investigative response. Now, appealing up the separate chains of command is not as effective.

Likewise, according to many staff, CBP is relying less on ICE to investigate the violations it uncovers. Many ICE investigators reported that CBP increasingly refers cases to other investigative agencies. In both the INS and Customs, investigators had the right of first refusal for cases detected by inspectors. Now, due to the decline in ICE's acceptance rate, interagency competition, growing mistrust, and a decline in feedback on case progress, CBP is referring more cases to the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and local law enforcement authorities for investigation, without first notifying ICE. In addition, CBP is developing its own investigative capabilities to use in lieu of ICE investigators. In October 2004, CBP announced a pilot program to increase the number of CBP enforcement officers—a former INS group that investigated some immigration cases, but was restricted to the ports of entry (POEs). CBP's pilot program would broaden the scope of these CBP enforcement officers' authority to include criminal violations of the federal customs and drug statutes and expand their jurisdiction outside the POEs. Along the same lines, the Border Patrol has taken some steps to reconstitute its investigative capabilities in alien smuggling cases.

A large number of CBP employees and ICE investigators expressed concern about the growing antagonism between the two organizations. They told us that they fear that coordination will deteriorate further as legacy employees retire or resign, and the remnants of good working relationships held over from the former INS and Customs will lapse.

Coordination of Intelligence Activities

CBP and ICE intelligence requirements overlap to a large extent, yet coordination of intelligence activities between them has also suffered. Both CBP and ICE require intelligence regarding illegal aliens, criminal aliens, alien smuggling, drug trafficking, fraudulent travel documents, and import and export violations. Despite their shared intelligence needs, the two organizations have separate intelligence structures and products. Intelligence coordination between CBP and ICE at both the headquarters and field levels needs improvement. At the headquarters level, the

only significant intelligence coordination effort that we could identify between the two organizations relates to intelligence received from outside agencies. Meanwhile, CBP withdrew from ICE field intelligence elements as ICE has from CBP's.

The organizations' primary means of sharing intelligence is the Treasury Enforcement Communications System (TECS), which was not designed for this purpose. Most CBP personnel lack the required level of access to retrieve critical information entered into TECS by ICE. As a result, valuable ICE information about criminal trends and threats is effectively withheld from most CBP employees, especially from those in the field. Furthermore, because the data system was not designed as an intelligence tool and does not highlight trends or detect anomalies, intelligence analysts often are unaware of the information it contains and must hunt through the entire system to retrieve information they might need.

CBP and ICE work independently of one another to develop intelligence products. CBP and ICE intelligence analysts told us that the two organizations have never co-authored any major intelligence products. The intelligence products each generates serve their respective needs and may not present a comprehensive picture of border security.

Improved efforts to eliminate intelligence stovepipes are needed. Intelligence and other information CBP and ICE could use to enhance their operations and improve overall border security is sometimes retained on the other side of the interagency wall. As a result, neither agency has all of the information it needs from the other.

Conclusions and Organizational Options

We heard a surprising and notable consistency of concerns amongst the more than 600 people we interviewed in 63 sites across the country. Their comments were supported by the data we reviewed. The breadth and depth of our field work, combined with data supporting the facts we learned in the field, allow us to conclude that significant problems have arisen from the institutional gap that separates the enforcement functions maintained in CBP and in ICE. While never perfect, what had been a working continuum of immigration and customs enforcement functions has been fractured, and redundant functions, stovepiped information, and inefficient operations have ensued. These problems defeat the purpose of the current organizational structure, which according to DHS,¹ was to establish coherent policies, reduce duplication of efforts, and improve information sharing.

In addressing the task given us by the Senate Homeland Security and Governmental Affairs Committee, we considered the merits of the recommendations made by the Heritage Foundation report, as well as two other alternatives:

- Eliminate BTS and maintain CBP and ICE as separate entities reporting directly to the DHS Deputy Secretary
- Create more effective coordination mechanisms by strengthening BTS and implementing more effective memoranda of understanding
- Merge CBP and ICE and eliminate BTS

The first option would not bridge the institutional gap between the enforcement functions. We believe it would further degrade enforcement coordination, as BTS' integrator function would be further removed from day-to-day operations up to the level of the Deputy Secretary. We did not endorse this option. The second option would require providing BTS with more staff and resources, as well as authority to effectively manage the operations of both ICE and CBP, including developing policy, directing resources, resolving disputes, and dictating personnel decisions. This model would effectively strip the heads of ICE and CBP of their authority and transfer it to BTS. While the authority to direct ICE and CBP would be merged into one organization, the separation between enforcement functions would continue in each of the two organizations. We did not endorse this option, either.

We endorsed the final option. Merging CBP and ICE and eliminating BTS, in our opinion, is the optimal solution to removing the problems arising from the current organizational structure. The almost universal message that we heard from inspectors, Border Patrol agents, investigators, and DRO officers is that they perceive the current problems between CBP and ICE to be inherent to the organizational structure and impossible to resolve absent a merger. Merging the entities would restore the continuum of enforcement functions that operated in the former INS and Customs. While costs would be associated with a merger, we believe that the costs of not merging would be greater. Allowing the current organizational structure to stand would allow ICE and CBP to continue to drift further apart, and operate too autonomously. While we acknowledge the Department's concern that merging the entities would represent a step back to the former agencies and would be wasteful because of the new costs required to accomplish merger, we disagree. We do not pro-

¹ DHS, "Border Reorganization Fact Sheet," January 30, 2003.

pose to reconstitute the INS and Customs. Further, we believe a merger can be accomplished more cheaply now than later. Merging ICE and CBP would create a true border enforcement agency enhanced not only by the seamless integration of enforcement functions, but by the melding of customs and immigration authorities, as well. With such an entity, we believe DHS would be better prepared to fulfill its mission of protecting the homeland.

In addition, our report addresses the placement of three other organizations that are currently in ICE: the Federal Protective Service (FPS), the Federal Air Marshal's Service (FAMS), and the Fraudulent Document Laboratory (FDL). The FPS mission to protect federal office buildings has no association with ICE's mission to investigate immigration and customs violations and should be separated from ICE. Similarly, because the FAMS mission to protect domestic civil aviation has little in common with the ICE mission, we suggested that FAMS be transferred back to TSA, which shares a similar mission. Finally, during the course of our fieldwork, we learned that ICE and CBP each maintain a capability for examining and analyzing fraudulent documents. To improve efficiency and information sharing, we suggested that the entities be merged into a single office located in CBP.

Recommendations for DHS Second Stage Review Implementation

While we were conducting our review, the Secretary initiated the Second Stage Review (2SR) of DHS operations and structure. On July 13, 2005, after reviewing the results of 2SR, as well as the results of our review, the Secretary decided not to merge ICE and CBP. Instead, he placed them in a direct reporting relationship to the Deputy Secretary, in a configuration similar to the first option that we considered.

In light of the Secretary's decision, we made 14 recommendations to address our organizational and operational concerns with CBP, ICE and BTS. The recommendations are designed to improve the organizations' ability to:

- Define and communicate roles and responsibilities
- Better coordinate planning and budgeting
- Set and enforce priorities
- Maintain control, monitor and arbitrate disputes
- Share information

In general, the report cautions about the need for continuing and intense attention to the management and coordination needs of the agencies. ICE and CBP operations still require intensive monitoring, and senior management will have to be available to address unanticipated integration issues.

Mr. Chairman, that concludes my prepared statement. I would be happy to answer any questions you or the Members may have.

Mr. ROGERS. Thank you, Mr. Ashbaugh.

The chair now recognizes Mr. Stewart Baker, Assistant Secretary for Policy at the U.S. Department of Homeland Security.

STATEMENT OF THE HON. STEWART BAKER

Mr. BAKER. Thank you, Chairman Rogers, Ranking Member Meek, members of the committee. It is a pleasure to be here. It is my first time testifying and, I am sure, not my last. I am looking forward to it.

Very briefly, I would say that having reviewed this very careful report, we come away with a sense that the inspector general has, with some exceptions, gotten the symptoms right. He has identified a lot of problems that ICE and CBP have in their relationship and in their execution of their duties.

But in terms of the prescription that the inspector general ultimately recommends, we could not disagree more. Our view is that if at this point the Congress were to seek to put CBP and ICE into a merger, it would set us back a year or more in the effort to control the border. We cannot afford a year at this stage in our country's history.

Let me go back and talk a little bit about, first, the symptoms and then the prescription.

We do not agree with everything in this report. It would be surprising if we did, but I think that Mr. Ashbaugh is correct to say that this was written to be a valuable record and it is a valuable resource. It identifies weaknesses in a variety of places, both the detention and removal and intelligence operational lack of coordination, and spends a long time discussing the very severe funding difficulties that ICE had as a result of the organizational changes that came with the creation of DHS.

ICE ended up substantially underfunded. The ICE investigators did not have travel funds. They did not have training funds. They did not have opportunities to bring witnesses along. They could not get awards or promotions, still vacant jobs. It was a very hard time for ICE and a time of considerable trouble in very substantial part because of the changes that came with the reorganization that created DHS.

We agree that these were all problems, in part because the Secretary began his examination of the department's needs at about the same time that the Inspector General did, and heard many of the same things that the Inspector General did about all of the problems that we have just described and that the Inspector General has laid out.

However, while the Inspector General was beginning his study, the Secretary was beginning a second-stage review to determine what could be done to address some of those problems. What I find striking is that many of the things that the Secretary has done are aimed at exactly the same kinds of symptoms that the Inspector General addresses.

For example, the detention and removal and the mismatch between resources there. For many years, there has been insufficient bed space to hold all the people that are apprehended. This is not a new development, and there was tension well before the creation of DHS over those issues, but there is no doubt that that is a concern.

As a result of the Secure Borders Initiative that the Secretary has now announced, we are making efforts to make sure that those beds are used in a strategic way in order to meet the strategic goals of the department, both of ICE and of CBP, and the creation of the Secure Borders Program Management Office is in substantial part designed to make sure that we are using our capabilities there in a fashion that meets all of the needs of all of the department most effectively.

Similarly in intelligence, the Secretary looked at the intelligence coordination and also thought it was insufficient; created a position of the chief intelligence officer. It was designed to change the way all of the elements of DHS deal with intelligence and to make sure that we did create things such as a career ladder for intelligence officers that would allow, encourage, perhaps even require that in the long run, as people serve as intelligence officers in DHS, they move from ICE to CBP and elsewhere in the department.

We are in the process of implementing that kind of change, and again, it is the Secretary's common view of the problem with the Inspector General that has led to the changes.

Similarly, coordination, there are a number of coordination issues that do need to be addressed item by item as we go through, and

the Secretary has begun that process. We are not perfect yet, that is for sure, but I think we are on the road and we can see the ways forward to addressing a lot of these problems.

The question then comes, should we instead merge these items, rather than pursue these smaller sets of initiatives? I would say formally that our view is we should not. The reason is that many of the problems that the Inspector General identified are precisely the result of the difficulties in any large-scale organizational change.

The ICE and CBP, but particularly ICE, personnel have just gone through a couple of years of great turmoil in which no one knew for sure what their job was, who they were going to report to, what their organizational prerogatives were, where the borders were with other organizations. That is just beginning to sort out.

If we went through a merger, we would be back in the process of saying, well, who do I report to; and what is my job; and what is his job; what does the logo look like; what color are we painting the trucks. All of those decisions create a kind of organizational churn that I fear would distract both ICE and CBP for a year or more, time which we could better use to try to get control of the border.

So while we agree on the symptoms, I do not think we agree on the prescription. We think that since the report began, since these stories were gathered by the Inspector General, changes have begun. We are a long way down the road. Many of those problems are in our rearview mirror and it is very dangerous to try to steer an organization of this size through this kind of a dangerous terrain by staring in the rearview mirror.

Thank you.

[The statement of Mr. Baker follows:]

PREPARED STATEMENT OF THE HON. STEWART A. BAKER

TUESDAY, NOVEMBER 15, 2005

INTRODUCTION

Mr. Chairman and members of the Committee: thank you for the opportunity to address you today, and for your ongoing support of the Department of Homeland Security's efforts to keep America secure. I am honored and pleased to appear before the House Homeland Security Committee, Subcommittee on Management, Integration and Oversight for the first time in my capacity as the Assistant Secretary for Policy at the Department of Homeland Security. I am pleased to have this opportunity to discuss the vital issues of border security, interior enforcement and immigration reform in the context of the Department's management challenges as a whole. appreciate this Subcommittee's work with the Department in this area. It is critical to the Department that we work hand-in-hand with you to ensure that we are effectively managing our border and interior enforcement efforts.

SECOND STAGE REVIEW

Considerable work has been done since 9/11 to enhance border security. We have significantly increased the number of agents and officers securing our borders and ports of entry, strengthened and consolidated inspections, expanded the terrorist watch list, created new screening and credentialing tools, and increased our enforcement capabilities. But much remains to be done. Illegal immigration undermines our national security. And illegal immigration imposes particular public safety and economic strains on our communities.

Secretary Chertoff studied these critical issues carefully in his Second Stage Review of the Department. He looked, in particular, at proposals to enhance coordina-

tion between Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP). After careful study, he decided that the best course was not to merge ICE and CBP, as some had suggested, but to propose a new management structure intended to reduce bureaucracy, improve accountability, and enhance coordination. In addition to making ICE and CBP direct reports to the Secretary and eliminating the Border and Transportation Security Directorate, the Secretary stood-up a Department-wide Policy office, Operations office, and Intelligence office to ensure that the Department and its components are mission-focused and effectively leveraging tools from across the DHS spectrum. Among other things, it was the Secretary's belief that a merger would diminish, rather than enhance, the roles of the Assistant Secretary of ICE and the Commissioner of CBP by, in effect, relegating them to the Deputy Assistant Secretary level. It would thus merely recreate a new bureaucratic reporting mechanism that has already been harshly criticized.

The Secretary also concluded that we must think innovatively and undertake a new way of doing business in the border security realm. Thus, the first major initiative that he launched following his Second Stage Review, in addition to the new management structure, was the stand-up of the Secure Border Initiative or SBI. The Secretary put together a team of experts, from CBP, ICE, CIS, U.S. Coast Guard, our Intelligence Office, Management Directorate, and others, to focus on all aspects of the border security problem—deterrence, detection, apprehension, detention, and removal. This initiative is intended to provide a mechanism to meet the challenges in each of these areas with an integrated mix of increased staffing, more robust interior enforcement, greater investment in detection technology and infrastructure, and enhanced coordination on the federal, state, local, and international levels. As discussed below, we are taking other important steps to enhance coordination between ICE and CBP.

I speak for the Secretary when I say that greater focus at the Department level—which we are undertaking—and innovative and integrated thinking are a far better solution to securing the border than imposing a massive reorganization through a merger of CBP and ICE. Indeed, our grave concern is that a merger would have precisely the opposite effect. The time and attention that it would take to restructure these two organizations under one figurative head would divert critical resources away from where our focus must be—securing the border. Indeed, it would yield a protracted period (at a minimum six months to a year) of mission confusion and organization churn, thus undermining the operational effectiveness of CBP, ICE, and, frankly, the Department at large.

As you all know well, much effort has gone over the past several years toward standing up these two agencies, which have unique and complementary missions. It was no easy task to merge the personnel, resources, authorities, systems, and cultures of some 22-government agencies to form the Department of Homeland Security. Forcing the 55,000 plus employees in these two components to go through yet another major structural change under one behemoth agency within the Department would be a significant setback. These two organizations are in the midst of developing a culture, infrastructure, lines of communication, and chain of command and policies. Upheaval created by the implementation of a new organization would likely draw further confusion as to roles and responsibilities and result in employee demoralization. Employees would once again need to cope with mission confusion, uncertainty of reporting and supervisory structures, among other concerns. We could expect many employees would be frustrated by the need to go through yet another massive change and many may leave altogether.

The challenges that confront us along our Nation's borders are substantial. But simply realigning the organizational boxes does not resolve the complex challenges presented in the dynamically evolving and resource-constrained environment in which we operate.

INSPECTOR GENERAL'S REPORT

I appreciate the careful study that the Inspector General's Office undertook when considering the value of merging ICE and CBP. The Inspector General's Office interviewed many ICE and CBP officials and employees in the field and we found much that was of value in that report. In particular, the report identified considerable morale problems, making it abundantly clear that many employees have struggled with the costs inherent in transition. ICE employees, in particular, also felt the strain associated with the agency's financial shortfalls. As you will see from the Department's written response to the report, however, we disagree with the ultimate conclusions drawn from these interviews. To that end, we are concerned that the IG did not sufficiently corroborate or validate the misperceptions inherent in many of the personal testimonials. To be sure, employee concerns suggest that there is an

exigency in improving culture and morale, but they do not justify a massive organizational change. We note that, in addition to the transitional problems inherent in any reorganization, ICE employees, in particular, were operating under budgetary constraints that the Department and Congress have worked to resolve. But we are concerned that the report focused too heavily on anecdotal evidence and not enough on empirical data that documents systemic coordination. While anecdotal interviews can and do provide valuable insight, we do not agree that they should serve as the impetus for a massive organizational change.

The report also fails to take into account that these two organizations are still in their early stages, having just gone through major transformations. As a result, it is far too early to tell whether the 2003 reorganization is successful. To that end, the report barely touches upon whether problems that existed prior to the reorganization, following passage of the Homeland Security Act, have now been resolved. Nor did the report take a serious look at whether some of the identified problems are in fact “legacy” problems. And there is little discussion of the costs associated with a merger.

Let me be clear that I have not come here today to say that creating ICE and CBP out of the old immigration and customs organizations was cost-free or problem-free. All government reorganizations have costs as well as benefits, and the transition is never easy. It always takes time to find and solve the problems that arise from reorganization. Indeed, these are the growing pains inherent in any reorganization, especially when employees must adjust to new missions, financial systems, and management structures.

The report, however, did not address any of the positive steps these agencies have taken in the initial two years towards the integration of complex legacy authorities and diverse cultures both within the organizations and with each other. As part of the initial transition planning, noted but dismissed by the Inspector General in the report, existing policies and procedures were developed to provide a fully integrated, comprehensive immigration and customs cooperative process for the legacy Customs and former INS field managers. Both ICE and CBP developed organizational templates, which met the new DHS mission requirements. Subsequently, each organization highlighted problems for resolution and have worked towards enhancing coordination to address identified problems. Coordination issues continued to be worked through joint groups throughout the Department and within ICE and CBP. Coordination has improved simply by virtue of the fact that a number of offices that were previously housed in several different Departments are now under one umbrella. But, as we have documented in greater detail in our response to the report, significant steps have been taken to enhance coordination in all three areas that the Inspector General focused on: (1) Apprehension and Detention and Removal Operations; (2) Investigative Operations; and (3) Intelligence Activities. We invite you to study our response.

ENHANCED COORDINATION

While the Inspector General ultimately recommended merging the two agencies, he also included a series of valuable recommendations short of merger to address the coordination problems that he identified. We have studied carefully the report's recommendations and have already implemented some of these changes.

We agree with the Inspector General that the key to excellent performance lies in integrating the components through working level communication, enhanced coordination, and unified management from Department leadership on down. As I already mentioned above, we have begun to do precisely that.

First, as I noted above, we have created the **SBI Program Office**, which will report to the Secretary through the Policy Office. I am committed to overseeing this office closely and will ensure that it continues to receive the full attention of the highest levels of the Department. Under the Program Manager's office, we are integrating experts and resources from across the Department, including CBP, ICE, CIS, U.S. Coast Guard, and Intelligence, into our planning and execution. We are incorporating metrics and measurement into the SBI program plan. SBI will work in unity of command and purpose within the Department to systemically evaluate and resolve the problems along our Nation's borders.

The overall vision for the SBI includes:

- More agents to patrol our borders, secure our ports of entry and enforce immigration laws;
- Expanded detention and removal capabilities to eliminate “catch and release” situations once and for all;

- A comprehensive and systemic upgrading of the technology used in controlling the border, including increased manned aerial assets, expanded use of UAVs, and next-generation detection technology;
- Increased investment in infrastructure improvements at the border—providing additional physical security to sharply reduce illegal border crossings; and
- Greatly increased interior enforcement of our immigration laws—including more robust worksite enforcement and increased compliance with visa requirements.

In addition to SBI, we are undertaking a number of other steps to improve coordination, including:

- **Integration and alignment of priorities.** Both the Department-wide Policy office and Director of Operations Coordination will play a major role in integrating policy and operations of all the DHS operational agencies, including CBP and ICE. In coordination with CBP and ICE, they will also align Departmental priorities.
- **Performance tracking and interagency reviews.** The Office of Policy will monitor the implementation of these priorities through performance tracking and periodic interagency reviews, including assessments of related resource deployments.
- **Intelligence Fusion and Department-wide Intelligence Products.** Similarly, understanding the enemy's intent and capabilities affects how we operate at our borders. The Office of Intelligence and Analysis will take the lead in ensuring that we are operating under a common picture across the Department, thereby addressing the IG's concern for greater coordination in this area. In addition to the joint efforts that are already underway between these two agencies with respect to intelligence and information-sharing, the Department's new Chief of Intelligence will fuse information from all DHS components, including ICE and CBP. This organizational change within the Department will increase information sharing between components, but will also develop intelligence products that incorporate all-source information from across DHS. Over the last month, a working group within the Department established protocols and mechanisms to provide analysts from the Office of Intelligence and Analysis with much-improved access to key ICE and CBP databases, providing the Office of Intelligence and Analysis with a far better capacity to conduct patterns and trends analysis in this area. Plans are also underway to improve our Reports Officers program and the Department is making significant improvements in the number and quality of Intelligence Information Reports that it produces.
- **Performance Metrics.** The Department will develop performance metrics for internal CBP and ICE operations, and metrics for gauging the extent of interaction and coordination between CBP and ICE.
- **Budget Coordination.** Starting with the 2007 President's Budget request, the Department CFO has established a more formal process to ensure greater visibility and coordination between CBP and ICE for budget formulation and strategic planning processes. This will ensure a more consistent and proper balance of border/apprehension assets within CBP with interior enforcement/removal assets in ICE. In addition, the Chief Financial Officer will track budget execution to guarantee compliance with agreed-to budget and plans.
- **Joint CBP-ICE working groups.** A joint CBP-ICE working group will oversee the implementation of interagency coordination efforts and Memoranda of Understanding. The working group will be responsible for dispute resolution, responding to requests that deviate from plans, making adjustments, providing clarification, and resolving different interpretations of related guidance.

These enhancements will ensure that we are carefully monitoring, measuring, and implementing mechanisms to enhance coordination. At the same time, ICE and CBP have been working steadily to build a better relationship. Both ICE and CBP have increased productivity in virtually every facet of their law enforcement activities, in many cases breaking annual enforcement records. Collectively, they have generated many cooperative successes in the last two years, such as Operation ICE Storm, Operation Texas Hold 'Em, the ABC Initiative, the LAX Initiative, and the Expedited Removal Working Group. Indeed, it should be noted that the IG specifically pointed out in his report that he was not aware of many of the coordination efforts underway within the Department when he conducted his review.

At the same time, the decision not to merge these agencies also rests with an important truth about their work. While the core missions of ICE and CBP, interior enforcement and interdiction respectively, are closely related, they are not identical. ICE's Operation Predator and the enforcement of child exploitation laws and ICE's Violent Gang Initiative, Community Shield, are two such examples. Critical interior

enforcement elements could suffer mission degradation if the two agencies were merged into a massive 55,000-employee agency with a more diverse focus.

In addition, CBP has made great strides in its own merger at integrating its inspectional workforce, aspiring towards One Face at the Border. More than 37 cross training modules have been built and will be implemented in the field by December 31, 2005. These modules will not only cross train the existing personnel who were on-board at the time of the merger, but are also the key components in the 2-year On-the-job-training for all new CBP Officers. To date, students filling more than 112,660 training slots have passed through these courses. In the past year alone, more than 7,300 CBP Officers and Agriculture Specialists have taken the Anti-Terrorism courses and more than 13,150 employees have taken the fraudulent document detection courses.

ICE, overcoming enormous challenges to fulfill its mission, has accomplished much in the last two years. As the second largest federal contributor of agents to the Joint Terrorism Task Force, ICE has increased the number of ICE cases by 500 percent. In Worksite Enforcement, ICE targeted critical infrastructure worksites including airports in Operation Tarmac that resulted in the arrest of more than 1,190 unauthorized alien workers with 782 criminal indictments and nuclear power plants in Operation Glow Worm which resulted in the audit of 63,835 employee records. Fighting identity and benefits fraud, in fiscal year 2005, ICE conducted 3,591 investigations, leading to 875 criminal indictments. Investigating arms and strategic technology violations, ICE has initiated 5,670 investigations into illegal exports and has netted 431 arrests, 305 indictments and 282 convictions since the formation of the agency. In the detention and removal operations of undocumented aliens ICE reduced the average detention period for "other than Mexican" aliens that are detained. Using new strategies that blend immigration and customs authority ICE increased by more than 30 percent its human trafficking and smuggling investigations, and increased the assets seized to roughly \$27 million in FY 2005.

Additionally, in FY 2005, CBP cleared 86 million arriving air passengers from abroad. This is the largest number of air passengers traveling to the United States in history, and also marks the first year that the number of air passengers surpassed pre-9/11 levels. In FY 2005 CBP officers at ports of entry arrested more than 7,600 persons on outstanding state or federal warrants, more than a 40 percent increase over FY 2003. Over the last two years, CBP did its part to combat identity and document fraud through the successful implementation of the Machine Readable Passport and Digital Photograph requirements for travelers from Visa Waiver countries. In addition, CBP intercepted more than 75,000 fraudulent documents in each FY 2004 and FY 2005 and intercepted and denied entry to almost 500 persons last year who presented a terrorism or national security threat, more than a 20% increase over FY 2004. Between our ports of entry, the CBP Border Patrol again apprehended more than 1.1 million individuals attempting to illegally enter the United States, and the CBP P-3s based in Jacksonville, Florida and Corpus Christi, Texas contributed to the seizure of over 210,779 pounds (105 tons) of illegal drugs—over 38,600 more pounds (19 tons) than last year.

This is an impressive list of accomplishments, especially when viewed in light of the fact that at the time of the OIG's investigation, ICE was laboring under a severe budget shortfall that hampered its daily operations. In addition, CBP was heavily involved in the continued integration of its inspectional workforce and the Air and Marine Operations program. ICE's financial crisis seriously constrained hiring and operational flexibility, resulting in a morale-draining imposition of travel restrictions, compensation restrictions and other meaningful belt-tightening. Given these constraints, it is no surprise that the report revealed serious morale problems. In July 2005, Congress provided ICE with a funding supplemental of \$369 million. This Congressional appropriation will ensure that the agency functions much more effectively and that its employees thrive in their key enforcement mission.

The Department is grateful to this Subcommittee for its attention and support during the first years of our formation. We look forward to working hand-in-hand with this Subcommittee as we develop new technologies, enhance methodologies, and, critically, measure whether what we are doing is achieving real results. Conscious of our obligations to protect the Nation through effective border control we have deeply studied our enforcement challenges and whether we were meeting them in the most effective manner possible. Through the Second Stage Review and the proposed changes I have discussed with you today, I believe the Department has provided a roadmap for change and improvement in its performance, accountability, coordination, and management of personnel and duties.

The Department is fully committed to meeting the many challenges that any recently created organization faces and we believe we have made significant inroads in confronting the change needed to be more effective for the American people.

Thank you once again for the opportunity to discuss these issues with you, and I look forward to answering your questions.

Mr. ROGERS. I thank the gentlemen.

I have a few questions.

I wanted to address what you were focused on, Mr. Baker, and that is you acknowledge that the 14 symptoms, as you called them, are accurate and they exist. Then you go further and say that if we did make this merger, it would set us back a year, in your opinion, in securing our borders.

Well, if it is not working, why do we want to give it longer? And how much longer are you talking about?

You made reference to the fact that since the interviews for this audit were completed, you have already started implementing remedies. How long will it take for those to be effective so that people know who they are reporting to and what color the trucks are going to be painted?

Mr. BAKER. First, as I said, there were three main areas where there were concerns identified by the inspector general. In two of them, I can say we have already implemented many of the changes that we think are needed. The trucks and the logos, that has been decided and sorted out. It was sorted out months, if not a year ago.

Mr. ROGERS. A merger would not affect that.

Mr. BAKER. A merger would create yet another set of questions of that sort, because then the question becomes, well, who is my boss; what is my logo; which culture is going to predominate here; is this going to be principally the cops; is it going to be principally the inspectors who set the tone for the organization. In any merger, there are questions of that sort that sort down from the top all the way to the field units. All of those relationships would have to be re-sorted again.

So I would describe the kinds of problems that the Inspector General found as the kind of problems you would expect when you make a major reorganization. They are not fatal. They are problems that need to be solved and we are in the process of solving them. We are already planning detention and removal in a much more coordinated fashion and using it in a much more strategic fashion.

Mr. ROGERS. Are you seeing measurable improvements since you started making changes, because he found some pretty significant problems in communication between the two. For instance, the number of apprehensions were down.

Mr. BAKER. Yes. In July or August of this year in response to concerns about how we were using our detention facilities and whether we were using them strategically, the department began what became SBI, the Secure Border Initiative. The way we began that was by bringing people from ICE and CBP and several other organizations together to deal with the question of how are we going to address the very severe problem of non-Mexicans who are being apprehended crossing the southwest border.

This is a relatively recent, but very severe problem because, as Mr. Ashbaugh said, if you do not have the space for people, even after you catch them, you have to release them. We were in a position of releasing I think 120,000 people a year into the United States, when we told them to show up for their hearing, but a lot

of them would not. So that many of the illegal population of the United States were people that we had touched, apprehended and let go because we did not have space for them.

In an effort to address that, we have begun focusing on making sure that we detain. We detain practically every Brazilian that we pick up. As a result, the word has gotten back to Brazil that it is not a good idea to come here, pay a coyote to take you across the border, because you are going to end up back in Brazil before you know it. That is an expensive trip and it costs a lot of hire the coyote, and a lot of Brazilians seem to have been deterred from doing that by the knowledge that they are going to be detained.

We have begun doing that with other countries' nationals in an effort to spread that deterrence farther. Our hope is if we can do this in a systematic strategic fashion, that the deterrence will mean that in the long run we will not have to use as many of our detention facilities for non-Mexicans who are caught crossing the border. That is why I think of it as strategic.

But in the end, what we are doing is using DRO's capabilities very substantially in support of CBP. CBP has come out with a greater sense that its mission is being supported by DRO as a result of this process.

Mr. ROGERS. I am still looking for a timeframe within which you feel comfortable that you will have remedied the deficiencies that were outlined by Mr. Ashbaugh, and some metrics that you are saying you can point to that objectively verify what you are saying.

My time is up. Since there are only three of us here, we will have time for several rounds.

I now yield and recognize the ranking member, Mr. Meek, for any questions he may have.

Mr. MEEK. Thank you very much, Mr. Chairman.

I want to thank both of our witnesses for coming and sharing their thoughts with us today.

I pretty much have a 100-page-plus report from the inspector general's office, but I have very few questions for you.

Mr. Secretary Baker, I do have questions for you, sir. I know that the chairman asked you about the year-or-more kind of thing if you were to merge, but I guess I am looking at this from a standpoint of there is a carton of spoiled milk in the refrigerator and I open it up and take a smell and say, "Oh, wow, it is spoiled. Let me put it back in; maybe it will be fresh tomorrow." I mean, I am using that almost as a segue into just trying to break down how I am trying to understand when we see these very glaring concerns here by the inspector general.

I am even looking at page five of the report on to page six, where it talks about the fact that Customs Border Protection is now trying to, in the second paragraph, is developing its own investigative capabilities because of the frustration with ICE at this particular time.

When you have an inspector general's report saying lack of coordination between apprehension and detention and removal operations; insufficient coordination of investigative operations; and dysfunctional in coordination of intelligence activities, you know, I am sort of smelling a 9/11 coming on because that is what was in the 9/11 report. The FBI was not talking to the CIA.

So the Congress moved to move these agencies into one department; 22 legacy agencies came together. I am not going to say this will not get the management report as it relates to the federal government, but I did not think it set us a year back as it relates to enforcement.

I do really have some real concerns with this, because if something happens, and God forbid if it does and we find that the ball fell between these two agencies because of competition; because administrators did not want to talk to the next person. Meanwhile frontline people, and I am from Miami, I talk to these folks all the time, and they say, "Congressman listen, if you want to do something to help us on the frontline, put us together so that we can cut out this competition between one another."

So it is a problem when a Customs Border Protection officer starts an investigation and then ICE does not pick it up or does not show up at all as it relates to it and they have to go out and find another agency.

So if you can within the time left, I may ask another question before that, but I would like if you could try to try to give me a little bit more than what I have heard thus far of the reaction to the inspector general's report, sir.

Mr. BAKER. I am glad to.

First, with respect to the question of whether this is hopelessly broken or a spoiled carton of milk, I think that that is not the right conclusion to draw from this at all.

Just last week, a CBP inspector in New York inspected a cargo and found 138 pounds of heroin. Now, the easy and obvious thing to do if you are a CBP inspector in those circumstances and you do not trust ICE is to say, "I will find the stuff. I will declare it. We will get credit for having found 138 pounds worth of heroin."

But that is not what he did. Instead what he did was call ICE and say, "Here it is. I am going to put it all back, and when people come to pick it up, I want you to follow them." And that is exactly what he did. That allowed ICE to bust far more people who were involved in the heroin smuggling than otherwise would have been the case.

Now, think about that from the CBP officer's point of view. One, he has to give up the sole credit for identifying the drugs.

Mr. MEEK. Mr. Secretary, thank you for that example. I know that is an exception to the rule that we read in the report and what the officers tell me of their concerns and issues with the fact that we have two agencies pretty much doing the same thing, and we can break down the competition and duplication of investigative actions, or lack thereof, if we were to come together.

For the life of me, for an agency that has pulled together 22 legacy agencies, to break down, because the answer cannot be in the second-stage review, which I have read, everything reports directly to the secretary or under secretary.

Answer, what is the problem after that? I would feel a little bit more comfortable if it was not the borders. I would. I would say, well, you know, they will get around to it. That will be fine. It is an in-house thing.

But it is beyond an in-house thing because we see the ball dropping in the middle and it is example after example, and we are get-

ting hammered and the department is getting hammered. So it is our job and it is your job to make sure that we do what we are supposed to do.

I do have a second round of questioning. I do not want us to get too much off of our time. Maybe we can have a little better exchange next time. Thank you.

Mr. ROGERS. I thank the gentleman.

The chair now recognizes the gentleman from Indiana for any questions he may have.

Mr. SOUDER. Thank you.

I want to thank the inspector general for the report, which more or less to some degree was stating the obvious. It does not take a rearview mirror to see that there were going to be problems with this. Quite frankly, when you are trying to get past a problem like terrorism or narcotics, I prefer to be in a car where somebody checks the rearview mirror. History may not be exact, but often it rhymes.

In looking at the structure of this, I raised concerns about this from the time of the creation of the Department of Homeland Security in on the ground. I want to say that I think much of what you said is absolutely true. It is cultural. Anytime you merge an agency, you are going to have divisions. If we looked at the Department of Defense when it was first merged or how we did the Joint Chiefs, you are going to see different types of problems.

I would argue that to some degree this is cultural, but you have some structural underneath problems that have been kind of attempted to be ignored, some of which are financial. The deportation questions, the detention space questions, the number of agents you have on the border, all that may be related to just that we have played this shell game where we will have a border emphasis for a while, and then a deportation emphasis. We have to face up to the fact and try to do multiple things.

But when I bring to the table, and I have been tracking the drug issue long before 9/11, and the Department of Homeland Security, even more so than DEA which is targeted for drugs particularly, but you have more agents that have more to do with 20,000 to 30,000 people dying a year of illegal narcotics in the United States. In trying to chase the occasional terrorist, we cannot forget that this is constant terrorism, terrorizing families all over the United States.

You have critical departments in your agency that, under a merger, would have had a logical place, but illustrate the depth of the problem. One is the Air and Marine Division. The concept of the Border Patrol agency is a picket fence. We have had this debate for years between the Customs people and the Border Patrol people.

I have been with the Customs people actually in undercover things where they have evaded the Border Patrol people because sometimes the picket fence concept will take down a case, as you referred to like heroin, that needed to get through and set up a broader one, and we have not had that kind of coordination. Theoretically, we need that kind of coordination.

But when you are doing a drug case, by definition there is not a picket fence. The Air and Marine Division is down in Colombia.

Can you guarantee me that by putting them under a Border Patrol agency that you are not going to reduce the hours that we need in the P3s in Colombia? What about the transit zone? If we cannot control the transit zone in the Caribbean and the Eastern Pacific, our whole drug war falls apart.

We are spending millions of dollars at the grassroots level; billions of dollars trying to fight illegal narcotics. But if you all of a sudden take the Air and Marine Division, which in fact you have done, and rather than having it be a fungible division that goes all the way from Colombia, the Caribbean and the Eastern Pacific, and then in the United States, and try to say either you are ICE in investigations or you are Border, it does not fit. There is no where to put it.

As a result, what you have had to do is stick it under one, then debate whether it is going to go to the other. You have Air Force pilots who have done this for 20 years. They come into Homeland Security or Customs agency, and now you are telling them they are going to report to a Border Patrol person. It is not going to work. They are just not going to sign up. You are going to gut one of the most effective agencies in United States history.

Then we get to the Shadow Wolves. Here we have a huge problem on the southwest border, as well as up in upstate New York, where we have a history of Customs problems in the Indian nations, which often do not even recognize an international border. They are on both sides. We have one group, the Shadow Wolves, who were constructed by Mr. Bonner years ago, and they are fungible. They sometimes go work with the Mexican authorities; sometimes they do investigations; sometimes they are on the border. Then they say, "Okay, you are going to be CBP and you are going to line up and be like a traditional border patrol agency." It does not work.

Theoretically, you could have the two divisions merged and still have your different ways to do it. And then it is even more exaggerated in the intelligence stuff because now the Border Patrol want to stand up this sub-intelligence agency because they are looking for different things. So while theoretically these stovepipes can be connected, because of your internal structure, instead of consolidating intelligence, we have actually proliferated intelligence.

Now, nobody is arguing that you are not going to have divisions inside a merged division, but you would not have in some sub-parts of your agency this artificial, illogical division between the Investigations Division and the picket-fence border-type thing. It does not take a rearview mirror. It does not take an advance mirror. It does not take any rocket scientists to say, look, there are exceptions to this, and either you need to accommodate the exceptions or you need to restructure your agency. Thus far, you have not effectively, in my opinion, been able to deal with this.

What we have seen as a practical matter, you are getting more seizures at the border, but what you talked about, just because we are stopping more people; we have more people on the border. It is not because of any advances in the department. In fact, in the department you have gone backwards.

Take the heroin case. I find it a bit offensive on behalf of the Border Patrol historically to say that they would have not turned

that case over; that in fact, they might have gone to DEA; they might have gone to legacy Customs. That is not something that is new because of the way you structured your agency to put it back in the car. That was what they were supposed to do a long time ago, which was to check. We need to work for that kind of division, but I do not think that is because of your new merger.

So if we get to have some more questions, I will, but I wanted to raise those to your attention. We have not had the chance to talk yet, but this is something that some of us have been raising even from the time this agency was merged; how were you going to address this kind of diverse agency you have, and do not forget about narcotics, while you are trying to deal with terrorism.

Mr. BAKER. Thank you. I particularly appreciate your remarks with respect to the Border Patrol because I agree that their conduct with respect to narcotics cases is not the result of a recent merger or the changes in the organization. It is longstanding MOUs with the DEA and others.

I would say about Air-Marine operations that they are an immensely valuable resource, and I think last year probably set a record for interdiction, so something is still working and working very well.

That is one reason why I do not think, to use Representative Meek's analogy, that this is spoiled milk. There are many stories of things that go wrong, but they are by and large exceptions and we remember those stories and they get repeated precisely because they are exceptions. I do not think that the story of what happened in New York with 138 pounds of heroin is an exception. It is the rule. A lack of cooperation is the exception.

Mr. ROGERS. I thank the gentleman.

The chair now recognizes the gentleman from Texas, Mr. McCaul, for any questions he may have.

Mr. MCCAUL. Thank you, Mr. Chairman.

In this case, we have a disagreement, I guess. The IG comes forward with a report advocating a merger and then the department comes out and says, no, we disagree with that. A merger would produce, and I am quoting, "a protracted period of organizational turmoil that is unnecessary to achieve the coordination necessary between the two agencies."

If this has already been asked, I apologize, but obviously our biggest goal post-9/11 is coordination and sharing of information and communication interoperability. The sharing of information and intelligence is the key to our success. Stovepipes should be a thing of the past.

So I throw this question out to you, for Mr. Ashbaugh, do you believe that this kind of turmoil would occur if there was a merger? And the same for you, Mr. Baker. And which of these two scenarios better facilitates the coordination and sharing of information and intelligence?

Mr. ASHBAUGH. I think that we seem to be in agreement that ICE and CBP need an integrator; that there is work yet to be done to push these two organizations to working more effectively together. The difference has to do with whether or not the integrator is down in a single organization, and ICE-CBP-merged entity, or whether it is elevated to higher levels within DHS.

If you were to take, for example, the question of the Border Patrol and whether or not it should enhance its investigative capabilities in some way, in order for that decision to be addressed by DHS, it would have to involve the commissioner of ICE elevating the issue and the commissioner of CBP responding to the issue. It would work its way up through the chain. It would go through the Secure Border Initiative, and then through the Office of Policy. There would probably be a simultaneous referral to the Office of Operations Coordination, and eventually it would go to the deputy secretary and the secretary.

What we were proposing that that kind of decision would be hashed out down at what I will call the merged ICE-CBP level, sitting across the table with people who are conversant on a day-to-day basis with what is involved in it.

As to whether or not accomplishing this is going to result in turmoil and churn, the answer is yes. Any kind of structural reorganization and change of this kind is going to breed some uncertainty among the personnel as to what their new lot in life might be. It will also generate some confusion with respect to who is responsible and accountable for implementing. But I do think that in the long run, it is very, very important that we achieve that level of accountability, and the more agile choice-making that underlies our proposal.

When we looked, and you will see in the report that one of the things that we tried to do at the outset of this was to understand how the government came to the structure that we now have. We could not find a clear statement of mission or explanation for how ICE and CBP arose to their present condition. We could find much more information with respect to CBP and One Face at the Border, than we could with respect to ICE.

The question that was part of that effort was whether or not the current situation is entitled to some deference because of the way it got there and because of the thinking that led to it. What I am saying is that in our part of that review, we really could not find a coherent justification for how we got to where we are. The argument seems to be in large measure that the organization that we have is the one that we should keep, and that changing it is going to create so many disincentives that we should not address them.

Honestly, there will be turmoil. As I said, there will be loss of productivity, but at the same time I believe that the turmoil will not be as great as the department is characterizing it. There is a considerable amount of goodwill on the part of the employees of ICE and CBP in support of a merger that would help a long way in making it successful, and that what we are talking about is restoring, not recreating, not inventing, but restoring processes that many of the legacy employees still remember and know how to accomplish.

So yes, there is a cost, but I did think that that is not the end of the debate and that we really do have to consider as well whether or not to go forward.

Mr. McCAUL. So in your judgment, a merger would streamline the bureaucracy, enhance communication flow, and overcome some of the bureaucratic obstacles?

Mr. ASHBAUGH. No, it is not a silver bullet. It is not going to solve some of the traditional problems that we saw with INS and Customs back when they were legacy agencies, but we do think it would rationalize and render accountability with respect to the important choice-makings that are associated with trying to make this operation work.

Mr. MCCAUL. Mr. Baker?

Mr. BAKER. We would lose a year in the effort to control the border as people struggle with the question of, well, who do I work for, and what the badge looks like; what kind of uniforms are we wearing; who do we work for. Those sorts of questions would, as they did in the period that helped cause some of the problems that the inspector general has identified, cause great uncertainty and, as I think the inspector general recognizes, cause a lot of turmoil.

He hopes that it would not be too bad, but in fact I do not think that the Inspector General's report really looks at that question. It simply says, well, it might not be as bad as you fear because people still have goodwill. But I think that goodwill is part of what we count on, too, to make the smaller changes, but essential reforms that we are making work. In the next year, that is much more likely to produce results than starting yet another organizational mess.

So our view is that you need to start on the smaller reforms now. On the question of information-sharing, I have no doubt that information-sharing is going to be handled better for the short term and for the long term under the kinds of reforms that the chief intelligence officer is planning for the department than under a reorganization. I say that because it is important for ICE and CBP to be sharing intelligence, but it is also important for ICE and the Coast Guard to be sharing intelligence. It is vitally important for TSA to be sharing intelligence about suspect passengers before they arrive at the customs desk.

We need an intelligence-sharing architecture that covers the department. Saying, "Well, we will get intelligence-sharing by sticking parts of the department together and letting them share," is not a solution.

Mr. MCCAUL. Thank you.

Thank you, Mr. Chairman.

Mr. ROGERS. I thank the gentleman.

You made the characterization that we would be starting another organizational mess if we were to merge these back together. It seems like we have an organizational mess by the separation of the two agencies and we would be remedying it by setting it back together.

Once again, you use the one year that it would set us back. I still do not understand how you come up with that idea—that it would set us back a year in securing our borders if we did this. Tell me specifically, other than who you would report to.

I think an organizational chart remedies that; who you work for and what the uniforms are. How would we be set back a year?

Mr. BAKER. During the period in which the organization is being structured, people will of course be doing their jobs as they understand them, but it will be very difficult to try creative new things because they do not know who is in charge; they do not know what the rules are.

Mr. ROGERS. But you acknowledge what we are doing now is not working.

Mr. BAKER. I do not. I am sorry. I do not mean to say that it is not working. I am troubled by the stories that the Inspector General collected. Those are stories from a particular point in time and they are the reflection of ICE's very substantial budget difficulties, which made it difficult for them to meet all the needs that CBP had. They are the result of a lot of confusion arising from the reorganizations that had already occurred.

Those things are sorting themselves out. If we let them sort themselves out and address the individual problems as they arise, we are much more likely to come to a stable, workable, properly functioning system than if we say, "Oh well, I just want to throw the milk out and start over again."

Mr. ROGERS. By what point in time? When do you think we will have that circumstance corrected and we will have a finely tuned, well-running machine?

Mr. BAKER. Well, this is the federal government, so we will have a properly functioning mechanism for handling detention and removal within months.

Mr. ROGERS. Three months, six months, nine months, 18 months?

Mr. BAKER. Six months. I believe that we will get the—

Mr. ROGERS. How about the intelligence gathering and sharing?

Mr. BAKER. We are already doing a better job there. Again, I believe that we will have substantial improvements in that within the year.

Mr. ROGERS. Okay.

Mr. Ashbaugh, you talked about three options to consider, and you came down on the third option, mainly because the first two were eliminated by the Second-Stage Review. Isn't that true?

Mr. ASHBAUGH. I am sorry. No. The other two options were not eliminated from our consideration.

Mr. ROGERS. But for all practical purposes, through the Second-Stage Review, he was removing those two options from the table, wasn't he?

Mr. ASHBAUGH. I am hesitating on how to answer your question. I do not want to suggest in any regard that—

Mr. ROGERS. I am trying to discern whether or not you endorsed a merger because it was the only real option for you.

Mr. ASHBAUGH. No. We considered all three of the options fully.

Mr. ROGERS. Well, why were you limited to just three options?

Mr. ASHBAUGH. I guess it is because those were the only options that either had been suggested to us by the people that we spoke to or that occurred to us on our own. There were other options. For example, we could have suggested reverting to the precise structure that was set forth in the Homeland Security Act, which really was a return to the old separate, autonomous Customs Service on the one hand, and INS, minus immigration benefits on the other. We would not propose that.

One of the things that we did consider and we strongly endorsed was the effort at eliminating some of the stovepipes associated with the creation of CBP's initiative of One Face at the Border. So there were a number of different choices, I suppose, that we made, but

the three that we focused on are the ones that are described in the book.

Mr. ROGERS. Let me, and I know my time is about up, but do want to kind of focus on this timeline. You said that you spent seven months and interviewed over 600 people in this audit that you conducted. When were those interviews completed? I know that your report has been embargoed until today, but when was that product completed?

Mr. ASHBAUGH. We had a rough draft which we gave to the secretary before his 2SR decision in I believe perhaps late June, but the formal draft, the first draft went to the department on July 20 or thereabouts.

Mr. ROGERS. Okay. My time is up. I look forward to my next round.

The chair now recognizes the gentleman from Florida, Mr. Meek.

Mr. MEEK. Thank you very much, Mr. Chairman.

Secretary Baker, I have some of the same concerns that the chairman has as it relates to the magic number of 1 year. Maybe that will go along with the sour milk comment, but I can tell you this, I am quite concerned. I am someone who has worn a badge before in my professional career and I know the kind of walls that are built between law enforcement agencies as it relates to investigations in cases.

When I say I smell a 9/11 coming on, I can see the same ingredients that I read in the 9/11 report, that I am pretty sure if you go to the FBI or the CIA, they said, they, you know, we have a remedy for that; we recognize that that is an issue, and we are working on it.

The bottom line is that, like I said, it would be okay if it was not dealing with national security at the borders. If we have one agency thinking that the other agency is following up on a case, that is a problem. I just want to just share with you, just as one member on this committee, and I do not think this is a Democratic view. I think this is a bipartisan view that something has to be done, more sooner than later.

And just having the department say, you know, we have put in mechanisms to make sure that this does not happen, and then it happens, I take great responsibility for what happens in the department and around the department, especially when I sit on this subcommittee and I am supposed to push the cards.

So there will be some amendments or amendments that the department is probably going to have to lobby against on the committee because every time we get the opportunity, we are going to take these inspector general reports and what we know from what we read in the paper and what we watch on the news of the problems with the department as it relates to management, and try to put them into action. I do not think that is personal. I think it is the business of making sure that we protect the American people, even though I know the department feels that way, too.

I do feel very strongly that we can merge. I feel we can. I do not feel it would take a year. I feel that agencies, law, men and women, can come together, especially as it relates to the frontline folks. I do not know how the brass feels about it in both agencies because they may, someone may have to take a lower rank or a higher

rank, or attrition may make it all come together. But to say that it is going to set us back a year as though we are in the business of protecting the homeland for the next 5 years, this is something that is going to go on forever. I think it will be able to help us.

You answered one of the questions that I had for my second round as it relates to information gathering, but I guess, Mr. Secretary, how would you, looking at this inspector general's report, and I want to say thank God for the inspector general. They are supposed to look at you in a way that will improve the department. Sometimes it is not necessarily politically correct to scrutinize the department, but you know, let's thank God for the career service and members of Congress like myself who see that kind of activity and call foul.

I think it is important that we respond in a better way to what the inspector general is saying, versus the second-stage review has taken care of this, or we feel that there will be improvements. Will there be some sort of report? Are you all thinking about a report of saying, okay, we know that there are members on the Hill that would like to see us put together. I have already gotten the message in my office that you all are against the merger. The White House is against the merger.

So if you get things lay the way they are here in Washington, it is pretty much a done deal that it is not going to happen. But there are some members of Congress that are concerned about it.

What are some of the reassurances that you all want to put into place outside of saying, "Well, whenever you all call us back to the Hill, we will report on our improvement"? Will it be an inside report or will it be an evaluation by your policy shop? Or will it be something that the secretary will do in a written report to members of Congress in answering the 14 recommendations that the inspector general has made, or the three points that we continue to talk about here at this meeting?

Mr. BAKER. Thank you, Representative Meek.

I feel the same way about the Inspector General report. They are not always easy reading, if you are in charge of the organization, but it is very important to have the truth told to you about problems in your organization. We do not happen to feel that the Inspector General devoted a lot of time to deciding what the consequences of particular options would be, but the focus on the difficulties that were faced earlier in the year in ICE and CBP is a very valuable thing.

In terms of what we would be proposing to do, in the first area of detention and removal, we propose to have not just a program office, but a substantial number of metrics that we will be using to manage detention and removal, and to look for the kinds of deterrent effect that we hope to have. There is no reason why a summary of what is happening, using actual metrics to try to measure the results of programs cannot be made available.

Mr. MEEK. I am a couple of seconds over my time. I heard the chairman saying we will go a third round, which I know you are looking forward to. I am going to yield back the balance of my time, what is left.

Mr. ROGERS. I thank the gentleman. I would backup what he said, that our concerns about the current status are bipartisan. It is not a Democrat or Republican perspective.

The chair now recognizes the gentleman from Indiana for additional questions.

Mr. SOUDER. Mr. Baker, it is kind of disturbing because you stated twice in some detail to the committee, which I find fairly disturbing, that the reason you do not want to revisit this is because you are worried about the time in deciding on uniforms and selecting logos.

I am not asking for you to spend a whole bunch of time digging out documents and so on, but I would appreciate it if you would respond back to the committee approximately how many man-hours were spent on determining the logos and the uniforms; whether it is 100 hours, 2,400 hours, 24,000 hours.

We have the ability to ask for meeting documents and all that type of stuff, but that is not a good exercise of our time. But I would like to get an idea of how much time you actually spend on this type of thing, because if it is just a couple of days, we can afford that. If it is a waste of time, actually they can just keep their old uniforms. But twice you have raised that, I am sure symbolically more than anything else.

Mr. BAKER. Yes.

Mr. SOUDER. But in fact I know in the department there was a lot of consternation about what they are going to look like and how to do that. We want to make sure, and that is why I would like to have some kind of an estimate actually for the record, just an estimate, because we do not want to spend a lot of time on that.

At the same time, that is not what this is about. It is not about whether they are going to have to change their logos. We want to have the best and most secure system possible. If necessary, we will ask some of our staff to design new logos, then you will not have to worry about that.

Were you aware that this committee under former Chairman Cox within the first year at a Republican members meeting voted unanimously to merge these two divisions back together almost immediately, and that we immediately have bipartisan support? Were you aware of that before Secretary Chertoff even came in under Secretary Ridge that the members of the Homeland Security Committee almost from the day we were organized unanimously opposed this?

Mr. BAKER. I am aware that this has been a prospect and an issue that has been seriously examined several times and has substantial support. I would suggest, and you are quite right, I was speaking symbolically. There are many costs to a merger and the costs grow and the benefits diminish as time goes on. So I think it would be unwise at this point to take an action, even if it might have been a good idea 1 1/2 years ago.

Mr. SOUDER. When we raised it, we were told that, well, give it a chance and see if it is working. We have continued, on the Republican side and on the Democratic side, to feel that it is not working. And then Secretary Ridge said, well, there is going to be a new secretary. Then we got a new secretary and we were told to hold off, not to pass the legislation, again which had bipartisan, ba-

sically unanimous support on this committee; that we should wait until Secretary Chertoff was going to do a review.

Then he did a review which we disagreed with. It was supposedly going to be in this bill. Actually, it was in the original mark-up, and Secretary Chertoff first called this committee, calling anybody he could get a hold of, then called the leadership to ask it to come out.

What we see is a continual pattern here of basically a clear position in the United States Congress. It is not new. It is not something we just came up with. It is something that we have had in a bipartisan way, those of us who have worked with this for a long time. And it is kind of hard to understand the intense opposition of your agency when so many people from such diverse backgrounds, from border States and non-border States, it cannot be argued, oh, we are just representing the unions. I don't represent the unions. I do not have any border people. I am in the inland part of the country.

I am interested in trying to make this work, but what I have seen is that the concept of what you are trying to do is to take and have a border and then do the investigations and separate it. It is like horizontal management, when in fact the challenges are more vertical. Here is the terrorist coming through; here is the contraband like narcotics coming through; and here is illegal immigration. The seamlessness has to go with the different challenges that are coming at the border. It is not like it is going across the border and you structure it from a management standpoint an agency that is like this, when your challenges are really vertical challenges.

Okay, we have illegal immigrants coming in. Are we going to deport them? How are we going to handle them? A percentage of those illegal immigrants are potential terrorists. How are we going to handle them and what agencies are they going to be handed-off to? How do you relate to the FBI? How do you relate to the terrorist organizations?

You have another cluster of contraband, some of which is Department of Commerce-related, if they are bringing things in that break the intellectual property rights of manufacturers in my district. That is one type of challenge. If it is drugs, it is another kind of challenge; whether you are working with DEA, it is another kind of challenge. And then you have this whole, they are coming in from Colombia into the Eastern Pacific, and then into Mexico; then they are popping up to the border; then they are moving on in a seamless drug thing, and we have these arbitrary things where you have to negotiate. Okay, we are going to hand this to ICE; we are going to hand it to DEA; and there is not somebody over in a logical, and my background is management, in a logical management structure.

I understand what you are trying to do. The reason I went through that brief history is I believe the reason the divisions are there is because we had some disagreements in Congress in the creation of the Department of Homeland Security. One was we were not dealing with deportation and illegal immigration. Because of that, the Judiciary Committee lobbied aggressively to make sure that ICE could stand strong so that we could try and address that question. But your structure is based on a historically irrelevant

argument at this point, because we are all trying to figure out how we are going to deal with work visas, with deportation, with more detention centers, and no longer is that part of the immigration structure going to be ignored.

I believe your artificial division, if you look back on it historically, was based on that debate, which is now irrelevant, and your structure that you are trying to defend, understanding you had a lot of blood spilled on the ground to get to where you are, and I understand that is based on a premise that does not exist anymore.

From the pure management analysis, which the inspector general went in going, why did you do it this way? It has actually led, and is going to lead, to more duplication and logical stovepiping. Quite frankly, it is going to lead to logical stovepiping, the way you have it, because of this multi-mission at the border and the multi-mission inside ICE. By definition, you are going to have stovepiping because it is not stood up right.

I would be interested in your response.

Mr. BAKER. I think that, first, I was not around for the creation of this particular organizational structure. I am not familiar with the details of that history. But I think the response that you have gotten, the reluctance to make this change is a reflection of our direct experience with the costs of major organizational change. It really is a staggering cost and it will set us back very substantially, a year or more, in our effort to control the border if we have to go through the wrenching changes that will come with that. It is, of course, not choosing the logo. It is a question of defining the mission, defining the jobs, choosing the people, setting the culture.

Last point, with respect to whether ICE is an appropriate organizational structure, there really is quite a bit of value in recognizing that ICE is among the largest law enforcement organizations in the country, and building it around the culture of law enforcement, of knowing how to make cases and how to do evidence chains, and how to work with prosecutors. Those are things that law enforcement agencies treasure and select for and teach everyone inside their organization to do. Having a consistent culture that values all of those things has great value for the country.

Mr. ROGERS. I thank the gentleman.

Mr. Ashbaugh, a little while ago you heard reference made to the fact that several changes have been implemented that have made significant progress from the time you completed your interviews to date, to improve those 14 deficiencies that are outlined in your report.

Did you note in your report or your investigation and your interviews any management machinery being put in place that was in fact going to remedy those in the short term? I would think the last five months would be a short term.

Mr. ASHBAUGH. Would you repeat the last part of the question?

Mr. ROGERS. Did you note any management changes that were being implemented or discussed or presented that were going to remedy the 14 deficiencies that you found in these two entities?

Mr. ASHBAUGH. We are leaning in the direction of changing it. I will try and answer it this way. With respect to 2SR itself, the report was not able to assess the potential or the achievements associated with it. It was too inchoate at that point. There was, for

example, a significant management meeting in March of 2005 in which they discussed some of the specific issues relating to the decline in referrals from CBP to ICE and other things of that sort, but we were not able to assess the consequences or the results of it.

So I would have to say, I do not want to say that the answer is no. The fact of the matter is that the department since January of 2003 has been improving in its efforts at management. It has been a lengthy process, rather than something that could be confined to the last 5 months.

We have tried in the report to give credit for some of the achievements. For example, there is an MOU that was an effort to relate ICE and port-of-entry issues, and to integrate and better coordinate those two. So there have been activities all along, but we are not in a position yet where we can assess 2SR per se.

I do want to reaffirm our intent to do that as we go through the examination of the 14 recommendations and the follow-up on that.

Mr. ROGERS. You heard Mr. Baker indicate earlier that he acknowledges the 14 recommendations; that those symptoms do exist. But he went further and said that it does not seem that the IG spent a lot of time looking at what the consequences of a merger would be. Do you think that is an accurate description?

Mr. ASHBAUGH. I am sorry. Would you repeat the question again?

Mr. ROGERS. What the consequences would be; you recommended a merger.

Mr. ASHBAUGH. The costs?

Mr. ROGERS. My understanding of Mr. Baker's assessment was that when you said in your report, we think a merger is in the best interest, that you did not look at or consider the adverse consequences of that merger. Is that an accurate assessment?

Mr. ASHBAUGH. Oh, no, it is not an accurate assessment. With respect to costs, we were clearly frustrated over our inability to get good data from the department that we could try to reverse-engineer to come to some kind of calculation on what we had spent already. But fundamentally, our assessment is that this is a change that would be very beneficial to the department, and we do not see an adverse consequence to it.

Mr. ROGERS. Okay. This is my last question, the one you have been looking for, for Mr. Baker.

You indicated, not you but Mr. Ashbaugh indicated, that they never were able to discern through their interviews or investigation the essential reason why the two agencies were separated. In reviewing the history of the entities that you now have supervision over, do you know in essence why they were separated, why ICE and CBP were separated?

Mr. BAKER. I was not here for that and do not have any personal knowledge of that.

Mr. ROGERS. Thank you very much.

The chair now recognizes the gentleman from Florida, Mr. Meek.

Mr. MEEK. Thank you, Mr. Chairman.

Mr. Baker, still, I guess I want to go back to first-base again, if that is okay with you, coordination of apprehension, detention and removal operations; coordination of investigative operations; and coordination of intelligence activities.

Now, that is the bread and butter of law enforcement, just in those three categories. I asked you in the last round of questions, will there be some sort of written report to members of this committee and to the full committee on addressing the issues that were pointed out in the inspector general's report.

The reason why I asked that is not because someone wrote it down and said you need to ask this question. I am asking this, being an experienced member now on the select committee, and now on this standing committee, and being a member of the Armed Services Committee, you know, it is almost like, boy, I am glad that hearing is over.

Because I am going to tell you right now, Mr. Secretary, you have a real job cut out for you defending the department's position on this. It is not just a report. It is what we read in the paper. It is with the officers we talk to. It is very, very difficult to defend.

Like I said, this is a bipartisan feeling. If something comes to you, and you say, you know, I should do this as a policymaker, and then the agency says, no, we are taking care of that. I think we just recently a couple of minutes ago have gone through the timeline of how many times we were put on pause. I even feel funny as a policymaker speaking to an agency person and saying, well, can we? Because it is not an "ask" kind of situation.

That is the reason why I am trying to work with members on this committee in a bipartisan way of taking some action. I believe the only way we are going to get to where we need to get to, looking at the three things I just pointed out, leave alone the possible cost savings that may happen out of this that was not addressed in the inspector general's report, I would point out. But you are automatically saying that there will be costs for the merger.

Anyone knows that streamlining law enforcement agencies, especially when they have similar functions, will be able to help resolve many of the issues that are in the report.

So I guess I would go along the line of, and I am going to ask the question again, and maybe you can answer it a little better: Will there be some sort of, to the 14 recommendations, a written progress report from the department on the progress in those areas, or in the three areas that were addressed here at this committee meeting, especially dealing with the issues of detention and removal operations and intelligence activities, coordination of it. I think that is important. I really think that is important for the reason why we are here today.

And investigative operations, you do not have to be in a law enforcement agency to know that there is going to be competition between two agencies. I mean, it is just like a human thing. It is going to happen. Oh, we are not going to let them do this; we are going to do it. I mean, that is just the way it goes. And it is very innocent. Everyone that wears the badge and everyone that wears and ID with a security clearance, their number one job is to protect Americans.

But looking at the overall picture, that is not happening under an atmosphere of competition. You just cannot say, well you know, you all go out there and play. I would not say "play," but you all go out there and do your job and we expect that everyone is going to be a grownup when it comes down to the final analysis, because

they all have to report to who, the secretary and the Congress about what they are doing to justify their funding.

So when we see the lack of communications here, and the lack of management in some areas, you may say that they are addressed, but it is a very, very difficult position to defend. I know you have your legislative team on the Hill, but I do not know about the chairman, and I do not know about the other members of this committee, but I want to work with the department. That is my job, to help the department in any way that I can.

But when I feel the department is more interested in management the way we see it, versus what the inspector general sees it, or the American people see it, then that is when we start having a rub. I believe we are starting to rub right about now. I do feel whenever the green light is given to all members of this committee that it will happen and it will not be an "ask" kind of situation.

So I guess this is more of a statement, Mr. Secretary. I would not ask you to respond. I think you have tried to respond to some of the issues, but this is a very, very difficult time for all of us. Once again, I am going to state that I know that there will be an amendment that will come forth in coming days to germane bills to try to make this happen. I hope that not only a good discussion comes out of it, but good action comes out of it, and the department can find a way that it can be a part of something good in helping us to be able to all manage this Department of Homeland Security and make it better than it is right now.

So I look forward to the coming days. I look forward to hopefully some re-thinking in your shop and also with the secretary as it relates to this, and I believe the White House, too, because it is important that we show the American people that we are trying to do all we can to protect them. Some of the statements that are made here and there may not be what we want on the billboard, but I think that we really are going to have to work hard in the coming days.

So I am imploring with you and with the department to find a way to be for streamlining and integrating those three points that I have pointed out, the investigative, detention and removal, and information and intelligence activities. Or we have a recipe for something bad to happen in this country. You do not want to be a part of that, and I definitely do not want to be a part of it. No one wants to be a part of it. So let's start working together on this.

Mr. BAKER. I would be delighted to work together with you. We do want the same thing. We do want to fix the problems. I would suggest that as you think about what should be done, you might take a look at the 20-page response that we wrote to the Inspector General in which we did not argue that they were wrong about a lot of things, but we pointed out a lot of things that simply had not gotten recognized where there was good cooperation; where there was good coordination; there was good intelligence-sharing.

Mr. ROGERS. I thank the gentleman for yielding back to the chair.

I recognize the gentleman from Indiana for another round of questions.

Mr. SOUDER. Thank you very much, Mr. Chairman.

Mr. ROGERS. I am sorry.

Ms. Lofgren, she has been sitting here for a while, if you do not mind.

Ms. LOFGREN. Thank you very much.

I will just say I have learned in the Congress how unsatisfactory are the words "I told you so." When these measures were considered, we had a very spirited debate in the Judiciary Committee about the division. Those of us who have been around the immigration subject for several decades suggested that everything in the inspector general's report would happen, and in fact it has.

I think that the easiest way to solve it is to undo the division, frankly. I am hopeful, it is certainly not Secretary Chertoff's fault it was divided. The Congress did it, not the secretary and not you. I think that we ought to be partners in fixing it.

It is not, in my judgment, just, well, take for example the issue highlighted on detention space. That is predictable since the ICE does not have ownership. But it is not just detention space. It is a whole system. We lack adjudicatory power. That is aggravating our detention space because we do not have enough administrative law judges to process the cases, which by the way would be lots cheaper than actually doing the full amount of detention space that is predicted.

I am not saying we do not need it. We do need additional detention space, but not as much as is predicted, if we actually had the administrative law judge power to adjudicate cases promptly. So unless one agency has ownership of the whole thing, it is going to be second-best in terms of coordination.

I am wondering, Mr. Ashbaugh, I think this was beyond your scope, but if you could enlighten us on what you found in terms of coordination. I suggest that if we are going to do a Department of Homeland Security that we ought to throw in consular services, visa issuance, along with it, because talk about a disconnect between what is going on, and that was very much resisted by the then-secretary of state, Mr. Powell, and ultimately was not included.

Did you have a chance to look at that interface as well?

Mr. ASHBAUGH. To look at the overseas operations of Homeland Security and the visa security program?

Ms. LOFGREN. Yes.

Mr. ASHBAUGH. Not as part of this review, no we did not. There simply was not enough time to go into an overseas kind of examination. But I would be remiss not to remind you that our office has done several reviews over the past 1 1/2 years with respect to the visa security program, with respect to the visa waiver program, with respect to the initial pilot in Riyadh.

Ms. LOFGREN. Right.

Mr. ASHBAUGH. And also with respect to the problems associated with stolen and counterfeit passports, and their use to enter the United States.

Ms. LOFGREN. Let me do a follow-up question, if I may then. It has to do with the use of technology. All these departments are, "crippled" might be too strong a word, but maybe not, with the lack of cutting-edge technology that would allow them really to utilize the information that is available somewhere in the system, not necessarily at the port-of-entry where they are.

Did you have an opportunity to assess technology deployment and usage as it relates to coordination?

Mr. ASHBAUGH. No, we did not. That was an issue that we did not cover.

Ms. LOFGREN. I would suggest, Mr. Chairman, that if we are going to ask the inspector general to do other things, that those two issues would profit us because I first started working with the Immigration Service in 1970. It was bad then and it is still bad. But as the rest of the world has moved on using technology, these functions have sort of frozen in time. We are now paying a huge price, not just in inefficiency, but also in security. That very much has to also be involved with the consular services.

Now that the players have changed, there might be a different attitude in terms of the interface with the visa function. Nobody in the State Department even wants to do that. It is the short-straw assignment for the State Department employee, and maybe we could integrate that in a way that would really, using technology, be a seamless shield against those who wish to harm us, but also the red carpet for those who really want to help us.

I yield back, and thanks for the recognition.

Mr. ROGERS. I thank the gentlelady.

As we are drawing to a close, the gentlelady from Texas has not had a chance to ask any questions. We will go to here if she wants, and then end up with the gentleman from Indiana.

Ms. JACKSON-LEE. I yield to the gentleman.

Mr. ROGERS. Okay. The gentleman from Indiana is recognized.

Mr. SOUDER. Thank you.

I appreciate your time today.

I found it pretty disturbing that you could not answer the chairman's question about why it was originally split, especially since the committee had stated that that was going to be one of the questions for the hearing. I think it does suggest that the division was somewhat artificially done by Congress and now Congress recognizes it made a mistake and we are trying to fix it. And the administration has dug in, even though it does not know why it was split in the first place. It is kind of an odd situation here.

You did raise one thing, I wanted to ask Mr. Ashbaugh, because I have not been able to see the report. I have not seen it yet at this point, or the administration's response. I thought it was an interesting question about should there be an ICE, which is a culture of investigations, where we train people to do investigations.

I think that was somewhat behind the Judiciary Committee's concerns that in deportation and immigration, that there was not enough of a culture investigations in deportation, and they wanted kind of a division. Because part of what we have here is we had a Border Patrol and we had investigations, and Customs was kind of the investigations and Border Patrol was the Border Patrol.

INS was kind of floating around uncertain what to do. So we took part of the Customs and put them as CBP, and part of them in investigations, and arbitrarily split groups that were at least reporting to the same boss.

Now, what I wondered is that in your report, did you look at this question of is it good to have an organization that is focused on investigations, that are trained to do investigations, and in fact are

they doing more than they did before? Now, have they improved the investigatory training? Are there more people? Is there a culture of investigations any different than we had under the legacy Customs?

Mr. ASHBAUGH. The department has taken a very important first step in terms of trying to establish a common culture. It comes through training, which is a traditional way of doing it. It is an effort to cross-train so that the immigration agents now have a better understanding of customs law and vice versa. It is also true that the 1811s, the special agents, the criminal law enforcement investigators are regarded as having something of a specific culture, if you will.

But by and large, INS and Customs were largely part of that culture, even the Border Patrol, and even the inspectors on the line were also doing enforcement in their own way, not with the full power, not with all of the benefits.

Mr. SOUDER. In fact, weren't they increasing cross-training before the creation of the Department of Homeland Security?

Mr. ASHBAUGH. No, I am referring to cross-training that the Department of Homeland Security initiated as part of the One Face at the Border. That is described in the report and we are very positive with respect to that initiative.

Mr. SOUDER. But in fact, weren't the Border Patrol and Customs doing cross-training before 9/11 so that Border Patrol people started to understand narcotics cases because we simply had a shortage of money at the border?

Mr. ASHBAUGH. You know, I cannot answer that question. I do recall, though, that there were cross-designations between Customs and INS, particularly at ports of entry, so that they were able to assign some of each to the various lanes. There was at least some effort.

Mr. SOUDER. And what you are describing in your report as to what they are doing now, is that precluded if the two merge? In other words, the cross-training that you are talking about, the creating of more of a culture of investigations, would that be at all precluded if the two agencies merge?

Mr. ASHBAUGH. No, it is not precluded. In fact, whether you merge or do not merge, the continuation of the training and the initiative is a very important one to Homeland Security.

Mr. SOUDER. Mr. Baker, do you believe that if you merge the two agencies, you still could not have one now reporting to a common boss, but one that is more investigatory and one that is more border, but that it would coordinate better how the investigations were connected with the border? Do you see it as necessarily precluding a culture of investigations in an investigations unit if these two agencies were merged?

Mr. BAKER. I think that really raises the question of whether the merger is the solution. Just putting these two agencies under the same head, after all, they were all under BTS before; they are now under the secretary. Putting them under some new person as the head does not change their relationship. What is going to be required is working out individual kinks in that relationship.

That is something that the secretary is working on now. It is exactly the sort of thing that would have to be done by whoever head-

ed the merged organization. The task does not substantially change and it does not substantially advance us toward the goal, simply to say, well, they all will report to the same place.

Mr. SOUDER. A common line organization does in fact matter, though. If you have two separate lines, and then have staff and policy and intelligence inputting into those two separate lines, in fact a line structure does matter because you can develop two cultures that are competitive if they are not reporting in the same line.

That is what I assume is what the Inspector General was in effect saying in your report, was that in fact having a common line structure would facilitate management. Is that the thrust?

Mr. ASHBAUGH. Yes, it is.

Mr. BAKER. If I could just offer one thing. You asked the question about metrics, and whether investigations have gone up at ICE. We provided that information and they have gone up very substantially, with total investigative cases were doubled between 2003 and 2005; and arrests, indictments, convictions and seizures are all up over the 2 years.

Mr. ROGERS. I thank the gentleman.

Now, the gentlelady from Texas is recognized for any questions she may have.

Ms. JACKSON-LEE. Thank you very much, Mr. Chairman.

As usual, let me thank the chairman and ranking member for an important hearing. Sadly though, however, and I know that both of you in your service realize that to some extent it is sad that we are here contending with the question of whether mergers or the merger has worked and how we can be more effective.

I say that in the backdrop to the responsibility not only of this committee and its responsibilities of oversight, but the department, the DHS, really has entrusted in it the hopes and aspirations of Americans as they relate to the 21st-century reign, if you will, of terror, looking to DHS as the firewall between them and acts of terror. And of course, in this instance, including some reasonable response, comprehensive response to immigration reform.

So we find ourselves betwixt and between on whether or not we can finally get to a point where we have operational operations. Let me share with you some words that were out of a report of the GAO. It seems that this is dated May 5, 2005. The dating information may be incorrect here, but it looks as if it is dated May 5, 2005.

It recounts these words: "In 2001, GAO testified that while restructuring may help address certain management challenges, INS faced significant challenges in assembling the basic systems and processes that any organization needs to accomplish its mission. These include clearly delineated roles and responsibilities; policies and procedures that effectively balance competing priorities; effective internal and external communications and coordination; and automation systems that provide accurate and timely information."

INS was transferred into the DHS in 2003. In 2004, GAO reported that, "Many similar management challenges we found at INS were still in existence in the new bureaus."

Mr. Ashbaugh, let me now turn to you. In the backdrop of those words, based upon what GAO found, you comment on problems

with the merger dealing with coordination of apprehension and detention and removal operations, the coordination of investigative operations, the coordination of intelligence activities. They go to the very crux, to a certain extent, of immigration issues and as well border security, and of course the issues of preventing those who might perpetrate violent terrorist acts inside our borders.

So in essence, what I am seeing here is a frightening assessment of a collapse of our system. Help me be convinced that that is not the case at this point, but let's focus in particular about the coordination of apprehension and detention.

I think one of the reasons we have seen the rise of the Minuteman, of course that is a question you may be able to comment on, but I use that as an example, is the frustration of the American people on let me just do it myself. We have good people on the ground working for both the CBP and ICE. There are good, hard-working people, but when they come to members of Congress and say their badges have not even been changed to the new merged entity, and they do not even have uniforms, then we know that we have some problems in the rafters.

Could you focus in detail on the problem or the need for work between the issues of coordination of apprehension and detention?

PREPARED STATEMENT OF THE HON. SHEILA JACKSON-LEE

NOVEMBER 15, 2005

Chairman Rogers and Ranking Member Meek, I appreciate your effort in convening today's second hearing on the benefits of merging Customs and Border Patrol (CBP) with Immigration and Customs Enforcement (ICE).

When the Bush Administration established the Department of Homeland Security (DHS) in 2003, it split up the U.S. Customs Service and the Bureau of Border Security and reconfigured them into two bureaus, CBP and ICE. The basic responsibility of CBP is to prevent illegal persons and goods from crossing the border. ICE is responsible for tracking down these persons and goods if they get past CBP.

This reorganization has resulted in some coordination problems. For instance, the training for daily border security operations is not working well. Supervisors from one legacy agency at a port-of-entry have not received the training to answer technical questions of inspectors from another legacy agency. Inspectors often are told just to do things the way they used to do them.

Much of the information sharing that is occurring at the border is due to existing personal relationships among employees, not to formal systems for exchanging information. For example, legacy Customs employees still cannot access immigration databases. This means a legacy Customs inspector cannot work at an immigration secondary inspection point, which reduces the overall flexibility of the workforce the Department is striving for.

Sometimes, to facilitate an investigation, ICE investigators want contraband to be allowed to pass through the border. This is known as, "a controlled delivery." While this is a legitimate investigatory method, it is contrary to CBP's mission, which is to prevent contraband from passing through the border. Consequently, ICE's use of controlled deliveries has created difficulties with CBP. ICE and CBP have formed a working group to develop a protocol for controlled deliveries that will resolve this conflict.

Alien smuggling investigations have suffered too. In INS, alien smuggling cases traditionally arose from inspectors, border patrol agents, or adjudicators noticing patterns or trends. The dissolution of INS has cut the connections between the agents who investigate alien smuggling and the front line personnel. Also, fewer Customs investigations have been generated by leads from inspectors.

To a great extent, however, CBP and ICE are suffering from the same management problems that INS had before DHS was created and the immigration enforcement functions were separated. In 1997, GAO reported that INS lacked clearly defined priorities and goals and that its organizational structure was fragmented both programmatically and geographically. Additionally, field managers had difficulty determining whom to coordinate with, when to coordinate, and how to communicate

with one another because they were unclear about headquarters offices' responsibilities and authority. GAO also reported that INS had not adequately defined the roles of its two key enforcement programs, Border Patrol and investigations, which resulted in overlapping responsibilities, inconsistent program implementation, and ineffective use of resources. INS's poor communications led to weaknesses in policies and procedures.

In 2004, GAO reported that CBP and ICE have many of the same management challenges that INS had. For example, in some areas related to investigative techniques and other operations, unresolved issues regarding roles and responsibilities give rise to disagreements and confusion. While initial steps have been taken to integrate the former immigration and customs investigators, such as establishing cross-training and pay parity, additional important steps remained to be completed to fully integrate investigators.

INS was a dysfunctional agency. When its enforcement responsibilities were taken over by DHS, they were divided between two new bureaus. The purpose of today's hearing is to decide whether the enforcement functions should be consolidated again. If the problem were just structural in nature, consolidation might make sense; but the problem is not just structural in nature. The bureaus still have serious management difficulties that need to be addressed. Our witnesses, Honorable Robert L. Ashbaugh and the Honorable Stewart Baker, will assist this body in elaborating on the nature of those problems.

I yield back.

Mr. ASHBAUGH. First off, the GAO's description of the problems endemic to INS are very familiar ones. The argument and the contention in our report was that the playing field has been changed by the fact that the entities are now divided or severed from each other. The concern that we have relates to the fact that in the detention arena, it is probable that there is no fix that the nation can afford; that in terms of identifying, locating and removing the overstays and the people who abscond, the numbers of so drastically out of sync that we are left using the resources that are available to us as rationally and as disciplined a way as we can.

There is some good news. The detention and removal operation at DHS has been able to decrease the average stay of the detainees. As I understand it, EOIR, Executive Office for Immigration Review, has also been able to accelerate its processing of cases so that the result is with a fixed level of bed space, ICE is able to house more detainees than it was able to in the past. So there is some good news in that respect.

The concern that we have in our report relates to the fact that CBP is not at the table when it comes to negotiating over how we are going to use these very finite and scarce resources. I do not think that is a complete answer to your question, Congresswoman, but at least let me start with that. If you have a follow-up, maybe that will help.

Ms. JACKSON-LEE. I do. I am going to allow you to follow up because I want you to focus on what I have just said, the coordination of apprehension and detention and removal operations. So I would like you to take and answer where the coordination is failing between CBP and ICE.

And then I would like to follow up by asking the question, as you have assessed CBP, one of the issues that have come to our attention is lacking, and you put the funding issue, so let's put the funding on the table, but to do your job, you have to have the resources to do your job.

If you do not have, for example, and I am wondering if you assessed that, and this is CBP, because they are frontline border patrol agents out and about and others, power boats, helicopters, hav-

ing laptop computers, night goggles, et cetera, those are just basic. And then why not put on the other side training, which may play into some of the deficiencies that you may see in them.

So if you could comment, focused on this coordination. I think this coordination is one of the key elements of whether you have success or not, and then equipment certainly plays into it, and we put funding over to the side. If you could just comment on those two points more thoroughly, I would appreciate it.

Mr. ASHBAUGH. With respect to coordination, our concern was and remains that ICE and CBP each have the capacity to disrupt the operations of the other if they do not function carefully. For example, CBP by virtue of its expedited removals, a class of aliens which typically are detained can suddenly thrust into ICE an unanticipated volume of new detainees that ICE has to manage. ICE has its own apprehension initiatives which may fill the bed space that CBP hoped to use. So systematically, there is an extraordinary need for coordination.

With respect to your question about whether or not the entities, ICE or CBP, have the equipment that they need to do their job, we did not study that. We view that as largely separate from the merger question, with one exception. The exception was that we felt that the separation of ICE and CBP put a very high premium on a careful informed set of decisions with respect to budget formulation and budget execution, that both of those needed to be accomplished with a very disciplined assessment and setting of priorities between the two organizations and what they were trying to accomplish.

Ms. JACKSON-LEE. Do you think, Mr. Baker, that the whole idea of coordination can be fixed? And do you have any assessment on the need for equipment in some of the agencies that we are speaking of, particularly CBP?

Mr. BAKER. Yes, we do believe that it can be fixed, and that it is being fixed right now. On the question of resources, there is no doubt that, as Representative Lofgren said, there is insufficient bed space for all the people that could be detained and perhaps should be detained. So that is a scarce resource to us, and under most future scenarios it is going to be a scarce resource for a long time.

We are trying to use that scarce resource in a strategic way under the direction of the Secretary in a fashion, with a program office that will oversee the relationship between ICE and CBP in an effort to secure the border, that is the Secure Border Initiative, with a program office. I note that the legislation recently introduced by the chairman here would require the establishment of that office, but it is in fact being stood up now. That has resulted in a very strategic and coordinated use of our scarce detention resources.

Ms. JACKSON-LEE. Besides the detention, if you would, Mr. Chairman, I will finish on this, and I thank you for your indulgence.

I mentioned besides detention, actual active equipment that even provides the opportunity to secure individuals that might be illegally coming across the border such as power boats, helicopters, laptop computers, night goggles, et cetera, which is also resources that are lacking. Is that being studied or assessed about whether

or not you have various personnel fully equipped with what they need to be fully equipped with? And in the initiative, are you looking at some of the options of, if you will, corralling or herding vacant beds in local jurisdictions that might be utilized on a temporary basis?

Mr. BAKER. We are looking at all of that, precisely because technology can in some cases substitute for people. The kinds of technology you use allows you to make tradeoffs, and we are looking for the most effective and cost-effective solutions.

Ms. JACKSON-LEE. Including the equipment?

Mr. BAKER. Yes, absolutely.

Ms. JACKSON-LEE. I would just say in conclusion, I think we are long overdue in providing for not only ICE, but the Border Patrol. We are long overdue in enforcing employer sanctions. We are long overdue for having some sort of orderly process for detainees, and certainly long overdue for some reasonable response to whether we can deport everyone. We cannot and do not expect to.

But I think the coordination issue is so key that, Mr. Chairman, I do not know how many hearings we will have to have to get to the bottom of it or to find out that we are making some progress, but I really think that the lack of coordination can be the death of all of us. If one hand does not know what the other hand is doing, we can't find the bad guys.

I thank the chairman, and I thank the witnesses.

Mr. ROGERS. I thank the gentlelady.

I also want to thank our witnesses who have been with us for nearly two hours now. I appreciate your very thoughtful comments. It has been helpful.

I appreciate the Members who have been here for questions.

I would advise the witnesses that the record will be left open for 10 days. As you know, votes do not occur until this evening, so several of our Members are not in town yet, but they may have questions that they would like to submit to you. I would ask that if they do, you submit a response in writing for the record.

With that, without objection, we are adjourned.

[Whereupon, at 3:50 p.m., the subcommittee was adjourned.]

**CBP AND ICE: DOES THE CURRENT
ORGANIZATIONAL STRUCTURE BEST SERVE
U.S. HOMELAND SECURITY INTERESTS?
PART III**

Thursday, May 11, 2006

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON MANAGEMENT,
INTEGRATION, AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to call, at 2:35 p.m., in Room 311, Cannon House Office Building, Hon. Mike Rogers [chairman of the subcommittee] presiding.

Present: Representatives Rogers, Souder, McCaul, and Meek.

Mr. ROGERS. I would like to call this meeting of the Homeland Security Subcommittee on Management, Integration and Oversight to order.

Today, we are holding our third and what I hope will be our last hearing on the interaction between two critical agencies, Customs and Border Protection, or CBP, and Immigration and Customs Enforcement, or ICE.

I would first like to welcome our witnesses and thank them for taking time out of their busy schedule to be with us today.

The main mission of CBP is border security, while the mission of ICE is enforcement of our immigration laws. Since these two agencies were created by the Department in March, 2003, numerous problems have been identified in how they interact and carry out their missions.

Let's be clear about the context of today's hearing. Our country is facing a crisis on the borders. The time for action is now, and the Department needs to understand that time is running out to fix these agencies.

In our first hearing in March, 2005, we heard how bureaucratic walls resulted in less cooperation and less information sharing. That same month, Secretary Chertoff launched a top-to-bottom review of the Department. Based on these results, Secretary Chertoff decided to keep the two agencies separate, but he also took a number of steps to improve their coordination and operation, some of which we will discuss today.

Our second hearing in November focused on a report from the Department's Inspector General in which he supported merging the agencies. Following that hearing, Ranking Member Meek and I joined with the chairman and ranking member of the full com-

mittee in writing to the Secretary to track the Department's progress. The response we received addressed some but not all of our concerns.

We are holding this third hearing to hear what concrete steps key officials have taken and plan to take to improve how the two agencies work together. We will also hear from two union representatives and a former senior Department official about challenges facing CBP and ICE.

I yield to the ranking member, Mr. Meek, for any opening statement he may have.

Mr. MEEK. Thank you, Mr. Chairman.

It is good to be here having a hearing dealing with the issue of ICE and also CBP. I am glad to have some of our witnesses back and some new witnesses before us here today, and I welcome you all to the committee.

I just want to start my comments by saying this issue has been a great concern to me and one that is one of the great concerns of Congress as it relates to the serious needs of this country to address an ongoing debate over immigration enforcement and border security.

As you recall, the Department of Homeland Security Inspector General, in testifying before this subcommittee back in November of 05, noted that ICE and CBP had serious coordination problems and, because of that, because of the separation of the two agencies, there were three outstanding issues: detention and removal operations were hindered, interdiction and investigation capabilities have been weakened, and there was a lack of coordination of intelligence activities.

During our subcommittee hearing 6 months ago, the Department, represented by Mr. Stewart Baker, Office of Policy, took somewhat of a defensive position on the Inspector General's findings and recommendations for a merger of both of these agencies. Mr. Baker went so far as to question the validity of the IG study.

In 2004 and prior to, the Department of Homeland Security OIG and the Heritage Foundation called for a merger of ICE and Customs and Border Protection.

As you may also recall, I originally offered and subsequently withdrew an amendment to merge both agencies back in November of 2005 during a full committee markup of the Border Security and Terrorism Prevention Act, H.R.C12. I did so only after Chairman King asked that the Department be given 6 months to address the various challenges between the two agencies.

I understand since the 6 months have passed, the Department may have taken or plans to take steps to address the IG's findings and 12 of the 14 IG's recommendations. Among those steps, the Department has reportedly taken in response to the IG's findings and the recommendations are the creation of a Department-ide Office of Policy Office of Operations and Coordination, an Office of Intelligence Analysis to enhance coordination of policy and operations and intelligence across the Department of Homeland Security, establish a direct line of report from ICE and CBP to the Secretary, standing up the ICE and CBP Coordination Council to encourage managers from each agency to meet regularly, establish a local

field working group of field managers to address coordination issues.

Mr. Chairman, even with these steps, I am not fully convinced that they are having the reach into the men and women in the field who are doing the front-line work. There has been no evidence provided to the subcommittee that field staff has been engaged and that these challenges have been clearly communicated to those in the field.

Staff in the subcommittee continues to hear from front-line agents and other law enforcement officials that ICE and also CBP are not working effectively together in the field. This is bothersome, given that the Department of Homeland Security IG also noted in its November, 2005, report that there was an apparent disconnect between headquarters in the perception of what was happening and what the IG observed in the field.

I can go on, Mr. Chairman, but what I want to do before I run out of time, I just want to allow us as much time to take advantage of this first panel. We know that we have a second panel that will be coming up, and many of us, those and members present here who have been working very hard on this issue—because, as you know, Mr. Chairman, it is dealing with our national security and it is dealing with our men and women in the field.

I definitely would ask unanimous consent to have the rest of my comments placed into the record; and I look forward to, hopefully, a fruitful discourse here today, sir.

Mr. ROGERS. I thank the gentleman. Without objection his full statement is going to be submitted in the record.

Mr. ROGERS. The Chair now asks unanimous consent for the gentleman from Indiana, Mr. Souder, to be recognized for purposes of opening statement. Without objection, Mr. Souder is recognized.

Mr. SOUDER. I ask my full statement be placed into the record.

PREPARED STATEMENT OF THE HON. MARK SOUDER

MAY 11, 2006

I would like to thank full committee Chairman Peter King, Subcommittee Chairman Mike Rogers and ranking member Kendrick Meek for calling a third hearing on this significant issue and assembling a distinguished panel of witnesses to discuss the efficient functioning of the Department of Homeland Security (DHS) and our national security.

In the aftermath of 9/11 the nation sought explanations and assurance. Our way of life had been assaulted and our security challenged. Working in conjunction with the Administration, Congress looked for the means by which to meet terrorism and defeat it. Essential to that effort was a strong national defense consisting of those agencies we already relied on to guard our borders, but one with a new focus. This new focus was reflected in the creation in March 2003 of DHS. The agency brought together twenty-two federal agencies and more than 170,000 employees in what was the most significant reorganization of the federal government in more than fifty years.

Reorganization on that magnitude required patience while DHS underwent the inevitable growing pains that came with forging a common agency culture from often disparate organizations. While the agency has been molding its identity and formulating policy it has been beset with management and operational challenges. Some it has weathered, others it has not. We are here today to examine one of those challenges, the increasing divide separating the efficient and integrated functioning of Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) with each other and the impact the disjunct has on their respective missions.

As chairman of the House Government Reform Subcommittee on Criminal Justice, Drug Policy and Human Resources, I have been very aware of the divides between

CBP and ICE. The issues are memorialized in the Government Reform Committee's report "2006 Congressional Drug Control Budget and Policy Assessment: A Review of the 2007 National Drug Control Budget and 2006 National Drug Control Strategy." The problems, as they relate to drug interdiction, include CBP Air's employment of its assets, the disconnect between Border Patrol agents and ICE investigators and the lack of priority given to drug investigation and interdiction by agency management.

It is redundant to say that interdicting illicit drugs before they cross our nation's border is the most effective means of removing narcotics from our streets. Yet that seemingly simple truth does not appear to have sufficiently filtered down through the Department of Homeland Security to the CBP Air component. The drug transit zone encompasses six million square miles of the eastern Pacific Ocean, the Caribbean Sea and the nations of Central America. Nearly all of the cocaine entering the United States passes through this zone. An interdiction strategy employing our various air and sea assets has proven effective as reflected in record seizures in 2005 and CBP's P-3 aircraft played a critical role in the detection and monitoring of drug smuggling vessels. The significance of this role was ably put by General Michael Kostelnik, CBP's Assistant Commissioner for the Office of Air and Marine, when he stated in a hearing before my Subcommittee on April 26, 2006 that over fifty percent of JIATF South's maritime aircraft patrol hours were flown by these aircraft.

Given the vital role of the P-3 it is disturbing that CBP is attempting to transfer control of air and marine operations to the Border Patrol sector chief level. Admittedly border security is a critical element, but it is a mistake to remove the P-3's from their current role and it is unwise for such a vital national asset to be regionalized. That model did not serve the old Immigration and Naturalization Service well and it will not serve either DHS or this nation well. I asked then CBP Commissioner Bonner in November 2005, why is agency was taking a regionalized approach when all other federal government agencies utilized a centralized approach. DHS needs to clearly define CBP Air's interdiction mission in the transit zone and these aircraft need to remain a national asset, accountable to both the Secretary and the Congress.

Given the vital role of the P-3 it is disturbing that CBP is attempting to transfer control of air and marine operations to the Border Patrol sector chief level. Admittedly border security is a critical element, but it is a mistake to remove the P-3's from their current role and it is unwise for such a vital national asset to be regionalized. That model did not serve the old Immigration and Naturalization Service well and it will not serve either DHS or this nation well. I asked then CBP Commissioner Robert Bonner in November 200, why his agency was taking a regionalized approach when all other federal government agencies utilized a centralized approach. DHS needs to clearly define CBP Air's interdiction mission in the transit zone and these aircraft need to remain a national asset, accountable to both the Secretary and the Congress.

While addressing the mission critical role of the P-3 aircraft I must express my concern at the current condition in which that fleet of aircraft now stands. As we meet here today, of the sixteen P-3as in the CBP air fleet, only a few are currently airworthy. Due to the lack of a sound recapitalization or progressive modernization program, these aircraft are grounded because of cracks in their airframes. It is appalling that such a significant component of the interdiction triad of air, sea and land assets sits useless.

It is very important that the officers and agents of CBP and Border Patrol have a clear relationship with the investigators of ICE. The role of ICE appears to vary in different regions of the country in part due to the policies carried over from legacy Customs and Border Patrol agencies. In some areas along the border drug seizures are turned over to either ICE or the Drug Enforcement Administration (DEA), depending on where the seizure occurred and in other areas, the receiving agency is determined in which week of the month the seizure occurred. Regional arrangements need to be overcome in favor of a uniform and consistent policy. A uniform strategy on the border is imperative whether for drugs or aliens.

Although ICE continues to enforce U.S. drug laws, primarily with a nexus to the border, investigative resources are lacking due to the expanded responsibilities of immigration enforcement. ICE has continued to increase its apprehensions of criminal aliens over the past several years. While this focus is appropriate to its mission, the interlocking relationship of drugs and alien smuggling cannot be ignored and resources must be allocated commensurately.

The issue of how to resolve the disjunct between ICE and CBP has been the subject of several analyses. One of the most prominent was prepared by the Office of the Inspector General (OIG) for the DHS in November 2005. The report concluded that the organizational structure contributed to what it characterized as "chal-

enges”, in three areas: coordination between apprehension and detention and removal efforts, and coordination of intelligence activities, coordination between interdiction and investigative efforts. The report said “The programmatic issues. . . [in the report]. . . are evidence that integration is not proceeding as well as required. We encountered concerns that institutional rivalries, duplication of functions and insularity of views were tending in a negative direction.” One of the suggestions the OIG report makes is to merge ICE and CBP. The report says about this option “The resulting consolidated border security agency with a single chair-of-command would be better positioned to coordinate mission, priorities and resources to guarantee a comprehensive border security system.”

The Heritage Foundation also completed a study in December 2004, “*DHS 2.0: Rethinking the Department of Homeland Security*” in which the authors wrote “. . . the split of responsibilities between the CBP and ICE was done without a compelling reason—other than vague (and ultimately incorrect) descriptive notion that the Customs and Border Protection would handle “border enforcement” and ICE would handle “interior enforcement.” In another report by Heritage on May 25, 2005, the authors said “Separating responsibilities makes no sense. Every ICE investigation begins with a person or persons crossing or attempting to cross U.S. borders. Thus every ICE operation requires working with CBP. In fact, in researching the creation of the department, we couldn’t find one compelling argument for creating separate agencies.”

Former CBP Commissioner Bonner was quoted in the *Washington Times* on December 7, 2005, as saying “There is a simple principle—Bureaucracy 101— that applies here; if you want people to work together, you don’t split them into two separate agencies. . . .”, he continued, “CBP’s mission is to interdict drugs and potential terrorist, but most of our interdictions are based on CBP’s own targeting and not what CBP gets from ICE. This breakdown in the intelligence and the feedback loop could be fixed simply by merging CBP and ICE—to create one border agency, but one with the investigative and intelligence capacity to do the job.”

The issues with border security are manifold and this nation deserves a competent, coherent approach. In view of the concerns I’ve mentioned and those raised by the reports from DHS and the Heritage Foundation, there appears no way the current framework under which CBP AND ICE operate can work. However, the fundamental issue we address today is one of national security, not organization. I therefore look forward to hearing from our panel members on this issue.

Mr. ROGERS. Without objection.

Mr. SOUDER. I want to make sure that each of the witnesses understand that my comments are not about the individuals. We have gone through multiple individuals in these positions. My concern is about the structure. No matter how well you do your job, I believe you have a structural problem, and my statement deals much with the narcotics, which is the committee I chair.

But in working through this, your mission is multi-tasked and very, very difficult to do. We want you to catch every potential terrorist and everybody on the watchlist, make sure that illegal immigrants don’t get across, make sure that no contraband gets across, whether narcotics or agriculture or biochemical or nuclear or any of that type of thing, and you are multi-tasked.

What became immediately apparent to me in the structure—and I have absolutely no answer to this question; and Steve King, our colleague from Iowa, was on the Arizona border last week and has come back absolutely furious. You can’t deal with the Shadow Wolves. It illustrates the problem. The Shadow Wolves are gradually leaving. The reason they are leaving is because you had a unit from the Tohono O’Odham Reservation of experienced trackers who did both border and investigations, and they didn’t picket fence, and they didn’t do just investigations, and your structure doesn’t accommodate that.

What do we do with people who go both directions? We don’t have a way to deal with them. Because your structure is so inefficient, you took Native Americans, one of the hardest groups to pen-

etrate—this would be like if we had a group of Iraqis who had been intelligence people in Iraq or Iran and said, oh, no, we are going to spread them all over the world. We don't care that that is their expertise.

We took the people in the Shadow Wolves and put them in the picket fence or made them investigators but took them away from where their skill was when we should be doing this at one of the biggest holes we have in the northern border. We should be looking at the southwest border as a model, but we busted it because it didn't fit the uniform structure of how to do this.

Then we have the Air and Marine Division. How do they fit? Some of their planes are down in Colombia. Some are doing investigations internally. They have got boats. They have got air. So in the Caribbean they are working under kind of legacy Customs-type things and doing what the Air and Marine Division did, and they moved into the typical CBP-type thing because they don't have a land border. But in the land border we are taking P3s used for intelligence and parking them like Border Patrol helicopters that go along.

Look, I want the border controlled, too, and the Members of Congress and voters are demanding we control the border, but you are multi-tasked with multiple missions, and you don't have the flexibility in the current structure.

General Kostelnik is trying to deal with it in the Caribbean. You don't have a solution for the land border because it doesn't fit the model. If you don't merge the divisions—this would be like having a baseball team with a manager for the pitchers and a manager for the hitters and then your proposal is to hire coaches to run between the two managers and add more layers when, in fact, it is within the same team. You should have had a structure that is here with divisions and then you wouldn't need to get to how do we coordinate the intelligence. We are going to add a whole new layer of bureaucracy so that you two can talk to each other when you should be under the same thing down in a logical, managerial structure. It is not the individuals here; it is the structure.

Maybe it can be accommodated, but until you can figure out how to do this—I was just in Charleston, looked at Operation Seahawk. They are standing up. You have the ability there to track every boat in every air. So we are funding millions of dollars in different ports saying why don't we invent this system to track every airplane and every boat. You have got it.

The divisions are so separated from each other in our government they have to put in new people to figure out how to talk to the other people so they know what the divisions are doing. It is incredibly exasperating. They, in fact, want to stand up an intelligence agency, because in El Paso they have seven different intelligence agencies and now they have a task force, so I think they spend half their day trying to talk to each other inside the same agency.

That is our frustration. It is not with the individuals, but I believe there are conceptual problems that need to be addressed. If you can show me another way, before all the Shadow Wolves quit, to figure out how to do the Shadow Wolves, Air and Marine, before you lose your people on the southwest border who know how to fly

the P3s and are trained to fly them, then I am willing to listen to it. But, right now, the new solution just seems to me like more agency people to talk to the people who they should have been in the same division on the same team in the first place.

Yield back.

Mr. ROGERS. Thank you, Mr. Souder.

Mr. ROGERS. I thank the witnesses. We have got two panels of distinguished guests today. We are going to be called for a series of votes around 3:15, so it is our goal to try to get through these opening statements and hopefully have some questions. Ideally, that vote will be called a little bit later so we can get through with the questions for the first panel and then break between the first and second panel. For that reason, I would ask that you keep your opening statements as limited as you can so we can have more room for questions and know that your full statement will be accepted for the record.

Mr. ROGERS. With that, the Chair calls the first panel and recognizes the Honorable Stewart A. Baker, Assistant Secretary for Policy for Homeland Security.

You are recognized for any statements you may have, Mr. Baker. Welcome back.

STATEMENT OF THE HONORABLE STEWART A. BAKER

Mr. BAKER. Thank you, Chairman Rogers, Ranking Member Meek, distinguished members of the committee. I appreciate the opportunity to address you today, and I want to thank you for your support for the Department.

I also want to thank you—when I came up here the first time to testify, it was my first opportunity to testify before the committee—before a congressional committee in years. I thought it was a pretty rough debut, but my second outing was defending the Dubai Ports World deal and our CIFIUS approval, so I now remember this subcommittee with great fondness. It is a pleasure to be back.

Any reorganization is going to have challenges, and it is certainly true that the creation of ICE and CBP was not an exception to that rule. But I think that, despite the initial challenges, ICE and CBP have taken a number of positive steps to effective coordination in their first 3 years of existence under DHS. We have documented this in greater detail in past testimony and in my prepared remarks, which I ask be accepted in full, but I think that I can recount them very briefly.

The Secretary's Second Stage Review, the Secure Border Initiative, the ICE–CBP Coordination Council, and many other coordination mechanisms have been developed that I think will create the kind of unified effort that we all want to see from ICE and CBP.

Secretary Chertoff's Second Stage Review led him to conclude that, while he thought pretty carefully about merging ICE and CBP, that it was not necessary to do that but instead was appropriate to create what I think Congressman Souder would describe as a manager. The manager of our team is the Secretary, and he created what you might think of as the pitching coach and the batting coach and the policy office and the operations office and the intelligence office to provide specific guidance to both ICE and CBP.

and then to let ICE and CBP do their jobs, report to him and take responsibility for making sure that they did coordinate their operations.

We have been operating under the Second Stage Review effectively for several months now; and, by and large, we are seeing very substantial improvements in coordination. One of them is the Secure Border Initiative, in which the Secretary looked carefully at some of the border issues that he faced and recognized that there are a lot of interdependencies among the agencies and among the kinds of control activities that you can undertake and that the only solution is to approach those problems as a whole with a coordinated response.

The SPI office that I have responsibility for has led integrated and coordinated approaches to procurements for the border, for catch and release coordination, approaches to solving the catch and release problem. Again, I think we have seen real results as a result of our efforts in that regard.

ICE and CBP also created the ICBP Coordination Council under the Secretary's direction, which allows the heads of those agencies to meet on a very regular basis to iron out problems as they arise rather than letting them fester.

One of the kinds of examples of the field operations where field agents are actually getting an opportunity to coordinate their activities is the Border Enforcement Security Task Force, or BEST Force. We have stood up one in Texas and are now standing up another in Arizona, which requires the coordination of ICE and CBP as well as the participation of intelligence elements aimed at addressing cross-border crime and human smuggling.

Finally, just in closing, keeping in mind the chairman's request that we keep our testimony short, I want to say that staying the course of results-oriented coordination is a better solution to securing the border and enforcing immigration law, providing the kind of coordination we need, than a new and very far-ranging reorganization that would force these agencies back into yet another period of uncertainty about how they are organized, who their boss is, and how they are going to be judged in carrying out a job that I think we all agree is absolutely essential at this point in our Nation's history.

Thank you, Mr. Chairman.

Mr. ROGERS. Thank you, Mr. Baker.

[The statement of Mr. Baker follows:]

PREPARED STATEMENT OF STEWART BAKER

THURSDAY, MAY 11, 2006

INTRODUCTION

Mr. Chairman and members of the Committee: thank you for the opportunity to address you today, and for your ongoing support of the Department of Homeland Security's efforts to keep America secure. I am honored and pleased to appear before the House Committee on Homeland Security, Subcommittee on Management, Integration, and Oversight to speak on behalf of the Department regarding our efforts to coordinate the missions of U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) during my tenure as the Assistant Secretary for Policy at the Department of Homeland Security. I am pleased to have this opportunity to discuss the current state of coordination and cooperation between two of the Department's most vital agencies: ICE and CBP each play a leading role in

several of the Department's crucial missions, including border security, interior enforcement and immigration reform. I appreciate this Subcommittee's work with the Department in this area. It is critical to the Department that we work hand-in-hand with you to ensure that we are effectively managing our border and interior enforcement efforts.

Despite initial challenges, ICE and CBP have taken many positive steps toward effective integration and coordination in the initial three years of their existence under the DHS organization. Both agencies have complex legacy authorities and diverse cultures. As part of the initial transition planning, policies and procedures were developed to provide a fully integrated, comprehensive immigration and customs cooperative process for the legacy Customs and former Immigration and Naturalization Service (INS) field managers. Both ICE and CBP developed organizational templates, which met the new DHS mission requirements. Subsequently, each organization highlighted problems for resolution and has worked towards enhancing coordination to address identified problems. Through interdisciplinary groups within the Department, we continue to work on coordination issues. Coordination has improved simply by virtue of the fact that a number of offices that were previously housed in several different Departments are now under one umbrella allowing conflict resolution and critical resource allocations to occur under a single Cabinet official. But, as we have documented in greater detail in previous testimony and our response to the Inspector General's November 2005 report concerning the possible merger of ICE and CBP, significant steps have been taken to enhance coordination at all levels. The Inspector General report focused on: (1) Apprehension and Detention and Removal Operations; (2) Investigative Operations; and (3) Intelligence Activities. Through an ongoing evolution of coordination, these and other vital areas of ICE, CBP, and DHS operations continue to be integrated for optimal performance of the Department's mandate to keep America secure.

This coordination occurs under several initiatives which include the Secretary's Second Stage Review reorganization, the Secure Border Initiative (SBI), the ICE-CBP Coordination Council, and many others in the field of operations.

SECOND STAGE REVIEW

Considerable work has been done since 9/11 to enhance border security. We have significantly increased the number of agents and officers securing our borders and ports of entry, strengthened and consolidated inspections, expanded the terrorist watch list, created new screening and credentialing tools, and increased our enforcement capabilities. But much remains to be done. Illegal immigration undermines our national security. And illegal immigration imposes particular public safety and economic strains on our communities.

Secretary Chertoff studied these critical issues carefully in his Second Stage Review of the Department. He looked, in particular, at proposals to enhance coordination between ICE and CBP. After careful study, he decided that the best course was not to merge the two agencies, as some had suggested, but to propose a new management structure intended to reduce bureaucracy, improve accountability, and enhance coordination. In addition to making ICE and CBP direct reports to the Secretary and eliminating the Border and Transportation Security Directorate (BTS), the Secretary stood up a Department-wide Policy Office, an Operations Coordination Office, and an Intelligence Office to ensure that the Department and its components are mission-focused and effectively leveraging tools from across the DHS spectrum. These offices have been charged with utilizing the tools of all of DHS's components to address the Department's critical homeland security mission. Indeed, these new offices interact on a daily basis with their counterparts in CBP and ICE, among other DHS component agencies. Among other things, it was the Secretary's belief that a merger would diminish, rather than enhance, the roles of the Assistant Secretary of ICE and the Commissioner of CBP by, in effect, relegating them to the Deputy Assistant Secretary level. It would thus merely recreate a bureaucratic reporting mechanism like BTS that has already been harshly criticized. Also, the disruption created by a merger of this magnitude would distract the focus of these two agencies.

Integration is coordinated at the Department level in conjunction with ICE and CBP by the Directorate of Policy, the Office of Intelligence and Analysis, and the Office of Operations Coordination including:

- **Integration and alignment of priorities.** Both the Department-wide Policy Office and Director of Operations Coordination play a major role in integrating policy and operations of all the DHS operational agencies, including CBP and ICE. In coordination with CBP and ICE, they also align Departmental priorities.

- **Performance tracking and interagency reviews.** The Office of Policy will monitor the implementation of these priorities through performance tracking and periodic interagency reviews, including assessments of related resource deployments.

- **Intelligence Fusion and Department-wide Intelligence Products.** The Office of Intelligence and Analysis takes the lead to ensure that we are operating under a common picture across the Department. In addition to the joint efforts that are already underway between these two agencies with respect to intelligence and information-sharing, the Department's new Chief of Intelligence fuses information from all DHS components, including ICE and CBP. This organizational change within the Department increases information sharing between components, and also develops intelligence products that incorporate all-source information from across DHS. A working group within the Department recently established protocols and mechanisms to provide analysts from the Office of Intelligence and Analysis with much-improved access to key ICE and CBP databases, providing the Office of Intelligence and Analysis with a far better capacity to conduct patterns and trends analysis in this area. Plans are also underway to improve our Reports Officers program and the Department is making significant improvements in the number and quality of Intelligence Information Reports that it produces.

A specific example of the CBP and ICE cooperative interaction is reflected at CBP's National Targeting Center (NTC). ICE has an on-site liaison officer assigned to the NTC to ensure effective communication and information exchanges between CBP and ICE. For example, all "special interest alien" intercepts by CBP Officers or Border Patrol Agents are reported to the NTC and notification is made to the ICE liaison officer to conduct further investigations or inquiries, or to forward the information for further review to the appropriate ICE headquarters personnel.

- **Performance Metrics.** The Department is developing performance metrics for internal CBP and ICE operations, and metrics for gauging the extent of interaction and coordination between CBP and ICE.

- **Budget Coordination.** Starting with the 2007 President's Budget, the Department CFO has established a more formal process to ensure greater visibility and coordination between CBP and ICE for budget formulation and strategic planning processes. This ensures a more consistent and proper balance of border/apprehension assets in CBP with interior enforcement/removal assets in ICE. In addition, the Chief Financial Officer (CFO) tracks budget execution to guarantee compliance with agreed-to budget and plans.

SECURE BORDER INITIATIVE

The Secretary also concluded that a top priority must be to think innovatively and undertake a new way of doing business in the border security realm. Thus, the first major initiative that he launched following his Second Stage Review, in addition to the new management structure, was the stand-up of the Secure Border Initiative or SBI. The Secretary put together a team of experts, from CBP, ICE, U.S. Citizenship and Immigration Services (CIS), U.S. Coast Guard, our Intelligence Office, Management Directorate, Office of International Affairs, and others, to focus on all aspects of immigration enforcement—deterrence, detection, apprehension, detention, removal and investigation of criminal organizations violating the border. This initiative is intended to provide a mechanism to meet the challenges in each of these areas with an integrated mix of increased staffing, robust interior enforcement, greater investment in detection technology and infrastructure, and enhanced coordination on the federal, state, local, and international levels.

Indeed, the SBI Program Executive Office (PEO) brings together ICE, CBP, Budget, and Management regularly to align resources. PEO will establish the proper foundation that will enable DHS components to create and maintain a functional and seamless network of capabilities that control the border and disrupt and dismantle the continuum of border crime into the interior of the United States. The PEO is partially staffed with ICE, CBP, and CIS detailees working hand-in-hand to review immigration enforcement resource proposals in advance of, or concurrent with, DHS CFO review. The office is also developing integrated planning models and program plans upon which major border and immigration reform resource decisions are based. It is of particular importance to note that the Secretary sits down with the leadership of these components each and every week to monitor improvements closely, launch new initiatives, ensure that we are measuring results, and re-adjust and realign resources accordingly.

The overall vision for SBI includes:

- More agents to patrol our borders, secure our ports of entry and enforce immigration laws;
- Expanded detention and removal capabilities to eliminate “catch and release” once and for all along the border;
- A comprehensive and systemic upgrading of the technology used in controlling the border, including increased manned aerial assets, expanded use of UAVs, and next-generation detection technology;
- Increased investment in infrastructure improvements at the border—providing additional physical security to sharply reduce illegal border crossings; and
- Increased interior enforcement of our immigration laws—including more robust worksite enforcement and increased compliance with visa requirements.

To date, SBI has had significant success in ending “catch and release” of aliens apprehended between ports of entry along the SW border for all Central American countries except one country (which has some unique issues). This success is a direct result of close cooperation between ICE and CBP to increase the efficiency of the apprehension and removal system as a whole including gaining efficiencies in obtaining travel documents, expanding the use of expedited removal and carefully monitoring the use of detention resources.

From the inception of SBI, ICE and CBP have been and continue to be major contributors to the initiative. In fact, ICE and CBP conduct the majority of the SBI ground work and are the key players chartered with ensuring SBI’s success. As SBI develops, ICE and CBP will continue to coordinate around this shared mission and vision of a more secure border.

ICE-CBP COORDINATION COUNCIL

To complement and solidify the effectiveness of the Second Stage Review Organization and the SBI initiative, CBP and ICE, under the Secretary’s direction, created the ICE-CBP Coordination Council. The Council meets regularly to proactively consider and address issues to better coordinate and resolve operational and policy matters and to monitor implementation of Memoranda of Understanding (MOUs), among other things. The Council reports to the Secretary on outstanding issues, resolutions, and disagreements that require further direction or de-confliction. The Council also interacts closely with the Assistant Secretary for Policy, the Director of Operations Coordination and the Chief Intelligence Officer.

The Council is co-chaired by the leaders of each agency, and membership includes the heads of the main operational divisions and main policy and planning arms of both ICE and CBP. The Council’s ongoing mission is to identify and address areas where greater cooperation can enhance mutual achievement of our missions and be proactive in fostering improved coordination efforts. It addresses a revolving agenda of ICE-CBP touch points, developing, as appropriate and necessary, interagency policies, prioritizations, and procedures to better guide ICE and CBP interactions and communicate roles and responsibilities in those matters.

The ICE–CBP Coordination Council has, and will continue to address, at a national level, appropriate touch points that are raised internally, or from the field level. An example of the Council’s procedural review process is its evaluation of existing ICE–CBP MOUs on referrals. During a Council meeting in February, for example, ICE and CBP agreed to issue a joint memorandum to clarify and reinforce key components of the existing policies by which CBP refers cases to ICE for investigation and to ensure that enforcement results are routinely and effectively shared between the two agencies. The signatories of this memorandum will be Acting Commissioner Spero and Assistant Secretary Myers, prior to its distribution to the field.

RESULTS—ORIENTED COORDINATION

A prime example of the kind of integration and cooperation which the Department envisions as the future of ICE/CBP operation is the established Border Enforcement Security Task Forces or BESTs along the Southwest border. These DHS-led task forces are comprised of ICE, CBP, the DHS Office of Intelligence and Analysis, and other Federal, State, and local entities. The goal of the BESTs is to improve border security through the creation of an environment that fosters cooperation and collaboration. A BEST in Laredo, Texas has been operational for several months now and is a model for widespread cooperation and efficacy. It has already improved DHS’s effectiveness against criminal activity. In March a second BEST began in Tucson, Arizona. Planning is underway for future task forces.

The BESTs are charged with sharing information, developing priority targets, and executing coordinated law enforcement operations designed to enhance border secu-

city and interior enforcement efforts. BESTs ensure that resources are appropriately focused and expended to identify and prioritize emerging or existing threats in order to disrupt and dismantle cross-border criminal organizations to mitigate border security vulnerabilities. BESTs focus on DHS strategic border security priorities, including

- Identification and Apprehension of Threats to National Security
- Cross-Border Violence
- Cross-Border Human Smuggling and Trafficking
- Cross-Border Contraband Smuggling
- Cross-Border Money Laundering and Bulk Cash Smuggling
- Transnational Criminal Gangs
- Cross-Border Weapons Smuggling or Trafficking
- Travel Document-related Identity Theft and Benefit Fraud
- Cross-Border Drug Smuggling

Such initiatives and other ongoing enhancements will ensure that we are carefully monitoring, measuring, and implementing mechanisms to enhance coordination. At the same time, ICE and CBP have been working steadily to build a better relationship at all levels. Both ICE and CBP have increased productivity in virtually every facet of their law enforcement activities, in many cases breaking annual enforcement records. Recent MOUs between ICE/Office of Investigations (OI) and CBP's Office of Border Patrol (BP) and Office of Field Operations (OFO) demonstrate that the necessary policy and operational coordination is occurring and continues to evolve.

While the core missions of CBP and ICE differ, CBP is primarily focused on interdiction and ICE on investigation of cross-border crime and the continuum of that crime into the interior, they are complementary. Together ICE and CBP have generated many cooperative successes in the last two years, such as Operation ICE Storm, Operation Texas Hold 'Em, the ABC Initiative, the LAX Initiative, and the Expedited Removal Working Group.

DHS supports and participates in the Human Smuggling and Trafficking Center (HSTC) an interagency intelligence/law enforcement/diplomacy fusion center and information clearinghouse created to combat human smuggling, human trafficking and criminal support of terrorist travel. An ICE supervisory special agent is the HSTC's director and it disseminates a large volume of information to CBP.

In addition to these achievements in inter-agency coordination, both agencies have accomplished intra-agency coordination and integration. For example CBP has made great strides in its own merger at integrating its inspectional workforce, aspiring to One Face at the Border. More than 37 cross training modules have been built and implemented in the field. These modules not only cross train the existing personnel who were on-board at the time of the merger, but are also the key components in the 2-year on-the-job-training for all new CBP Officers. To date, students filling more than 112,660 training slots have passed through these courses. In the past year alone, more than 7,300 CBP Officers and Agriculture Specialists have taken the Anti-Terrorism courses and more than 13,150 employees have taken the fraudulent document detection courses.

ICE, overcoming enormous challenges to fulfill its mission, has accomplished much in the last two years. As the second largest federal contributor of agents to the FBI's Joint Terrorism Task Force, ICE has increased the number of ICE cases by 500 percent. In Worksite Enforcement, ICE targeted critical infrastructure work-sites, including airports in Operation Tarmac that resulted in the arrest of more than 1,190 unauthorized alien workers with 782 criminal indictments, and nuclear power plants in Operation Glow Worm which resulted in the audit of 63,835 employee records. Fighting identity and benefits fraud, in fiscal year 2005, ICE initiated 3,894 investigations, leading to 914 criminal indictments. Investigating arms and strategic technology violations, ICE has initiated 5,670 investigations into illegal exports and has netted 431 arrests, 305 indictments and 282 convictions since the formation of the agency.

Additionally, in FY 2005, CBP cleared 86 million arriving air passengers from abroad. This is the largest number of air passengers traveling to the United States in history, and also marks the first year that the number of air passengers surpassed pre-9/11 levels. In FY 2005 CBP officers at ports of entry arrested more than 7,600 persons on outstanding state or federal warrants, more than a 40 percent increase over FY 2003. Over the last two years, CBP did its part to combat identity and document fraud through the successful implementation of the Machine Readable Passport and Digital Photograph requirements for travelers from Visa Waiver countries. In addition, CBP intercepted more than 75,000 fraudulent documents in both FY 2004 and FY 2005 and last year denied entry to almost 500 persons who presented a terrorism or national security threat, more than a 20 percent increase

over FY 2004. between our ports of entry, the CBP Border Patrol again apprehended more than 1.1 million individuals attempting to illegally enter the United States, and the CBP P-3s based in Jacksonville, Florida and Corpus Christi, Texas contributed to the seizure of over 210,779 pounds (105 tons) of illegal drugs—over 38,600 more pounds (19 tons) than last year.

CONCLUSION

I speak for the Secretary when I say that the level of focus at the Department—which we are undertaking—involves innovative and integrated thinking to create a truly integrated Department, particularly concerning ICE and CBP. Staying with this course of results-oriented coordination is a far better solution to securing the border and enforcing immigration law than imposing a massive reorganization through a merger of CBP and ICE. Indeed, the Inspector General's latest testimony [March 28, 2006] on this subject concludes, *"since our report, DHS has created the Secure Border Initiative, (SBI), the ICE-CBP Coordination Council, and Office of Intelligence and Analysis. These efforts are intended to address coordination issues and help integrate CBP and ICE operations. From what we know of these emerging efforts, we believe that the Department is taking the necessary steps toward addressing the coordination problems and, thus, our recommendations."*

Our gravest concern is that a merger would have precisely the opposite effect. The time and attention that it would take to restructure these two organizations under one figurative head would divert critical resources away from the critical DHS missions which demand our Department's focus. Indeed, a merger would yield a protracted period (at a minimum six months to a year) of disruption, mission confusion, and organizational churn, thus undermining the operational effectiveness of CBP, ICE, and, frankly, the Department at large.

The Department is grateful to this committee for its attention and support during the first years of our formation. We look forward to working hand-in-hand with this committee as we develop new technologies, enhance methodologies, and, critically, measure whether our efforts are achieving real results. Conscious of our obligations to protect the Nation through effective border control, we have studied our enforcement challenges intensely. Through the Second Stage Review, SBI, the ICE-CBP Coordination Council and other initiatives I have discussed with you today, I believe the Department has provided a roadmap for change and improvement in its performance, accountability, coordination, and management of personnel and duties.

The Department is fully committed to meeting the many challenges that any recently created organization faces and we believe we have made significant inroads in confronting the change needed to be more effective for the American people. Thank you once again for the opportunity to discuss these issues with you, and I look forward to answering your questions.

Mr. ROGERS. The Chair now recognizes the Honorable Julie Myers, Assistant Secretary for U.S. Immigration and Customs Enforcement for Homeland Security.

Thank you being here, and I look forward to your statement.

STATEMENT OF THE HON. JULIE L. MYERS

Ms. MYERS. Thank you for having me, Chairman Rogers, Ranking Member Meek and distinguished members of the subcommittee. It is my privilege to be here with you today to talk about ICE and CBP and their coordination.

As you know, the Homeland Security Act of 2002 prompted the largest reorganization of the Federal Government in more than 50 years; and after a degree of turbulence in its early years, I am pleased to report that ICE has now achieved a measured improvement in organizational and funding stability and a growing record of operational success.

In fact, since joining the agency in January, I have had the opportunity to visit with many, many of our employees in field offices all across the country. I have listened to these individuals, I have shared in their success, and I have heard their frustration; and al-

ready we have taken significant steps to address their concerns and to ensure that field relationships continue to improve.

It was clear to me from my visit to the field that, despite the challenges we have faced, that the men and women of ICE are having tremendous success in fulfilling their mission; and to me this demonstrates why a merger of our agencies is not necessary. In lieu of a merger, I believe that the Nation is best served by permitting ICE and CBP to remain focused on their respective interdiction and investigative missions, while increasing cooperation where it is most beneficial and also ensuring cooperation throughout the entire Department of Homeland Security with our many other partners who play important roles here. We are in the best position to recognize those areas in which ICE and CBP must work closely together and those areas where ICE and CBP have separate missions.

I would like to elaborate a little further on what Assistant Secretary Baker noted as a few examples of excellent cooperation between ICE and CBP. One of one of them certainly is the new Border Enforcement and Security Task Forces.

As Assistant Secretary Baker noted, we have one down in Laredo that has had tremendous success, but something I want to point out is that that was a field initiative. It actually started at the field level and bubbled up to headquarters where field folks saw ways that they could work together in an intelligence task force they called Operation Blackjack initially.

We have seen that success, and we are trying to model that in Arizona and other parts throughout the southwest border. In fact, just yesterday, this team was recognized by the Secretary for its tremendous work and cooperation.

Another example would be the ICE forensic document lab. It directly supports both ICE and CBP operations. CBP regularly refers suspect documents for lab analysis, and information between ICE and CBP is shared on trends and patterns and is also very useful for our new Document and Benefit Fraud Task Forces.

Also, as Assistant Secretary Baker noted, the expanded use of expedited removal has assisted ICE and CBP in removing more aliens apprehended at the border and the interior of the United States. Implementation of a new policy that we have developed Department-wide has resulted in a dramatic decrease in the time it takes to deport other than Mexicans from an average of 90 days down to 22 days.

I also want to elaborate just for a moment on a few examples of ICE successes within ICE's own distinct set of missions.

First, since ICE became an independent agency, we have really been able to use financial investigative methods in concert with our immigration authorities; and we are showing some tremendous results. In fact, assets seized in immigration-related criminal investigations grew from only 400,000 in fiscal year 2003 to nearly 34 million in fiscal year 2005.

We have also increased the number of our fugitive operation teams that target absconders, those individuals with a final order of removal and who evaded it. We now have 35 fugitive operation teams in place and will have 52 by the end of this fiscal year.

Last year, in fiscal year 2005, with only 17 teams in operation, we effectuated over 11,000 fugitive arrests. Since February of 05, we have arrested over 2,500 gang members from 239 different gangs and we have seized 122 firearms.

Finally, we have teamed up with the several governments in Latin America to conduct new trade transparency units to combat trade-based money laundering and other financial crimes.

Why are we having success? In my view, it is the perseverance and professionalism of the men and women of ICE. They have achieved much in just 3 short years. I believe preserving ICE as an independent agency capable of focusing directly upon its core mission and operations is critical to our continuing efforts to protect the American people from criminal and other threats that arise from our borders.

I would be pleased to answer your questions after Ms. Sperto talks, and I would ask that my full remarks be incorporated into the record.

Mr. ROGERS. It will. I want to thank you, Ms. Myers, for being here.

[The statement of Ms. Myers follows:]

PREPARED STATEMENT OF JULIE MYERS

THURSDAY, MAY 11, 2006

INTRODUCTION

Good afternoon, Chairman Rogers, Ranking Member Meek and distinguished Members of the House Homeland Security Management, Integration and Oversight Subcommittee. It is my privilege to be with you today to discuss how ICE is applying its expertise and authorities to protect the American people from threats that cross our borders.

THE ICE MISSION

Within the Department of Homeland Security (DHS), ICE has expansive investigative authorities and the largest number of criminal investigators. ICE is the Nation's principal investigative agency for violations of the law that have a nexus to our borders. Our mission is to protect the American people by combating terrorists and criminals who seek to cross our borders and threaten us here at home.

In furtherance of our mission, ICE personnel are assigned overseas, along the borders, and throughout the Nation's interior. ICE special agents and officers utilize their unified immigration and customs authorities to identify, investigate, apprehend and remove potential terrorists and transnational criminal groups that seek to move themselves, their supporters or their weapons across the Nation's borders through human, drug, contraband or financial smuggling networks, routes and methods.

Within the Nation's interior, ICE's Federal Protective Service (FPS) carries out its statutory responsibility to protect federal property, buildings and their occupants. FPS provides security and law enforcement services to 9,000 federal facilities and one million federal employees and visitors on a daily basis, thereby preventing criminal and terrorist attacks against our critical infrastructure and resources. Through each of these efforts, ICE continues to make strong contributions to the security of our Nation and its borders.

DHS ORGANIZATION

The creation of the Department of Homeland Security in 2003 prompted the largest reorganization of the federal government in more than 50 years. While several agencies, such as the U.S. Coast Guard and the U.S. Secret Service, joined DHS intact, others, such as ICE, were created from the constituent elements of legacy agencies. As a result, the management challenges associated with establishing ICE, the largest investigative agency within DHS, were significant. Compounding these challenges were severe financial shortfalls in 2003 and 2004 that have since been corrected with Congressional assistance and improved financial management. ICE also underwent further organizational changes with the 2004 transfer of the Office of Air and Marine Operations (AMO) to U.S. Customs and Border Protection (CBP), and

the 2005 transfer of the Federal Air Marshals Service (FAMS) from ICE back to the Transportation Security Administration (TSA).

I am pleased to report that ICE has now achieved a measured improvement in organizational and funding stability. We have overcome many of the transitional challenges associated with the agency's creation and early development. The resolution of budget constraints and organizational challenges has permitted ICE to increase its focus on making strong operational contributions to our border, homeland and national security. ICE is producing dramatic results across the full range of ICE field operations and we are achieving ever-greater synchronization with CBP.

The Inspector General's Merger Recommendation

Prompted in part by public reports detailing the transitional challenges associated with ICE's early development in 2003 and 2004, Congress requested in January 2005 that the DHS Inspector General (IG) assess the benefits of a possible merger of ICE and CBP. The IG conducted the bulk of its fieldwork between February and June 2005—a time in which many of the challenges associated with ICE's early development had yet to be fully resolved. The final November 2005 IG report included 14 recommendations for improving the cooperation between ICE and CBP, while recommending a suggested merger of the two agencies.

DHS-Second Stage Review

While the IG audit was underway, DHS was conducting its own internal, organizational review. Secretary Chertoff announced the results of the Department's Second Stage Review (2SR) in July 2005, which led to the dissolution of the Border and Transportation Security (BTS) directorate, a management layer between the Department's leadership and its component agencies. This streamlining of the Department's organization led to direct lines of reporting between the Secretary and ICE and CBP. Now there is the Secure Border Initiative (SBI) office, a Departmental-level office that functions, in effect, as the engine for increasing ICE and CBP synchronization across the full range of interdiction, investigative, and detention and removal functions.

These proactive steps have now eliminated the need for the Department to incur the additional and substantial costs and risks associated with a merger. The Department's overarching strategy supports efforts by ICE and CBP to remain focused on strengthening their respective investigative and interdiction mission areas, while simultaneously improving cooperation between the two agencies.

The following structural changes have increased Department-wide cooperation:

- The development and Department-wide implementation of a Directorate for Policy and an Office of Operations Coordination. These Departmental units work directly with ICE and CBP to achieve greater efficiencies in our border security, interdiction, investigative, apprehension, and detention and removal operations. The Office of Operations Coordination is in the process of establishing a new capability to design metrics that will support efforts to constantly assess data, measure results and make operational changes accordingly across the Department.
- DHS has also created a new Chief Intelligence Officer position, which includes oversight of a border security unit devoted entirely to the development of analysis, methodologies and requirements that will improve the fusion of border security information while alerting ICE and CBP to vulnerabilities that could be exploited by terrorist and other transnational criminal organizations along the southern and northern borders.
- The ICE/CBP Coordination Council provides a high-level forum for ICE and CBP senior management to identify and resolve outstanding issues between the agencies. ICE and CBP are aligning priorities in some important areas of shared mission. This will allow both agencies to effectively leverage each other's capabilities to achieve the highest levels of performance.
- The DHS Under Secretary for Management and the Chief Financial Officer collaborate directly with ICE and CBP to ensure greater degrees of transparency and cooperation throughout both agencies' budget formulation and strategic planning processes.
- By holding weekly SBI meetings with leadership from ICE, CBP and other involved Departmental offices, Secretary Chertoff maintains direct oversight of the agencies and signals his personal commitment to having ICE and CBP work in concert at all levels with the Department and one another.
- The creation of a standing SBI program office within the Department's Policy Directorate also provides high level direction and guidance to ICE and CBP across the full range of border and interior investigation, interdiction, enforcement, detention and removal operations and functions.

Ongoing organizational improvements resulting from Secretary Chertoff's 2SR, as well as the SBI program office, show that the Department's decision not to merge ICE and CBP was correct.

ICE believes that the Department's decision to maintain separate agencies is correct for four principal reasons.

- ICE is producing results in every area, from removals to partnerships with the Department of Justice and U.S. Citizenship and Immigration Services (CIS) to innovative techniques for catching criminals. ICE is also achieving a record level of success—success not achieved by the component agencies that formed ICE. This is due in large part to the agency's ability to focus and display high level attention on topics that previously had remained the domain of lower levels in the organization.
- A merger would cause another massive bureaucratic reorganization that would inflict significant financial costs while having a profound negative impact on operational efficiency and employee morale. It could take years before a merged unit would reach the level of performance presently achieved by the separate agencies.
- The recommendation to merge does not take into account the fact that identified challenges between CBP and ICE can be (and in fact have been) resolved through means other than a merger. The Department's 2SR review and the creation of the SBI office demonstrate the Department's ability to swiftly identify and build the right mechanisms for harmonizing ICE and CBP operations and programs.
- The DHS IG's merger recommendation also does not fully consider the significant risks associated with losing the operational focus presently displayed by ICE and CBP within their respective core investigative and interdiction mission areas. The risks include the diminished ability to apply focused and disciplined leadership across the full spectrum of core missions, as presently undertaken and carefully directed by ICE and CBP leadership.

ICE and our colleagues at the Department appreciate the hard work conducted by the IG. We continue to address and resolve issues of concern raised by the audit. However, it remains our informed assessment that homeland security would be best protected if ICE and CBP remain focused on their respective investigative and interdiction missions, while increasing cooperation where it is most beneficial.

We agree with a more recent assessment by the General Accounting Office (GAO) Director of Homeland Security and Justice, Mr. Richard M. Stana, who testified on March 28, 2006, before the House Government Reform Subcommittee on National Security, Emerging Threats and International Relations in opposition to merging ICE and CBP. Mr. Stana stated, "I think the best thing they can do right now is let [ICE] mature, let it stabilize." We strongly believe that Mr. Stana's assessment is correct. DHS remains strongly committed to preserving ICE and CBP as separate agencies and many improvements have already been made in the way the two agencies operate individually, and in concert with one another.

DHS INITIATIVES

Since launching the 2SR restructuring of DHS and establishing the SBI program office and its related initiatives, Secretary Chertoff has continued to aggressively foster a unified organizational culture across DHS. The positive impact of these efforts can be seen in several ICE and CBP operations and programs. For example,

- In 2006, the Department initiated the first new Border Enforcement Security Task Force (BEST) in Laredo, TX, building upon the success of the multi-agency ICE led Operation Blackjack that began in July 2005. BEST is an intelligence-driven task force, comprised of officers from federal, state, and local law enforcement agencies, including the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the U.S. Marshals Service (USMS) and CBP. These agencies share information and target the leadership and supporting infrastructure of violent criminal organizations operating in the Laredo/Nuevo Laredo area. Another BEST task force has been established in Arizona, and ICE and CBP are working together to identify future locations.
- Last month, the Department announced the creation of ten new Document and Benefit Fraud Task Forces across the country to combat the growing problems and national security risks associated with the falsification and counterfeiting of identity documents as well as fraud involving efforts to obtain immigration and other benefits. Along with an existing task force in Washington, D.C., new task forces will be established in Atlanta, Boston, Dallas, Denver, Detroit, Los Angeles, New York, Newark, Philadelphia and St. Paul. Supporting this ICE-led effort are the Departments of State, Justice and Labor, as well as other DHS agencies such as U.S. Citizenship and Immigration Services (CIS)

and the U.S. Secret Service. ICE and CIS have consistently been engaged in a productive joint anti-fraud effort since the Department's creation. With these new Document and Identify Benefit Fraud Task Forces, DHS is leading the federal effort to combat the grave national security vulnerabilities that can arise when potential terrorists and other criminals seek to exploit our immigration system through fraudulent means. A crucial element of this effort is the outstanding work performed by experts at the ICE Forensic Document Laboratory (FDL), which conducts sophisticated forensic analysis of counterfeit and fraudulent travel, identity and immigration benefit documents for ICE and our federal, state, local and international partners.

The expanded use of expedited removal and the efficiencies gained through an initial reengineering of our detention and removal processes under the auspices of the Secure Border Initiative have enhanced our removal capabilities. The additional beds and support staff included in the Administration's FY 2007 budget will allow us to facilitate the detention and removal of an additional 100,000 illegal aliens annually. This substantial increase in ICE capacity will strengthen deterrence by demonstrating to potential violators that apprehension is synonymous with removal from the United States.

- By reengineering ICE and CBP processes, the Department has continued to decrease the time it takes to remove non-Mexican (OTM) illegal aliens from this country. This new expansion of expedited removal (ER) policy permits the accelerated removal of such individuals apprehended within 14 days of entry and within 100 miles of the borders. To date, ER has decreased the average number of days that OTMs are detained from 90 to 22. By reducing the average detention time, the Department has, in effect, made available a greater number of beds and associated infrastructure to support additional capacity.
- ICE and CBP also work closely to ensure the integrity of their respective work forces. Staffed by both agencies 24 hours per day, the ICE/CBP Joint Intake Center (JIC) was established to receive, document, route and track misconduct allegations involving ICE and CBP personnel. Furthermore, ICE's Office of Professional Responsibility conducts all criminal investigations declined by the DHS Office of Inspector General involving both ICE and CBP employees.
- Through the Security and Prosperity Partnership of North America (SPP), ICE and CBP are actively engaged in DHS' cooperative efforts with the Governments of Canada and Mexico. For example, we are working with Mexican officials to combat border violence and improve public safety. In March, Secretary Chertoff met with the Secretary of Governance of Mexico, Carlos Abascal, to sign an action plan that strengthens cooperative procedures between federal law enforcement agencies on both sides of the border and the ability of our agencies to respond effectively to scenarios ranging from accidental crossings to incidents of violence. ICE and CBP are firmly committed to coordinating law enforcement efforts with the Government of Mexico—whether combating cross-border crime in Laredo, Texas, reducing the number of human smugglers operating along the southwest border, or uncovering cross-border tunnels in California and Arizona.

While significant gains have been made in coordinating both Department-wide and ICE/CBP operations with shared or overlapping mission sets, the Department's current structure also allows both agencies to develop expertise in their own mission areas without competing priorities.

THE ICE FOCUS

By maintaining ICE as an independent agency, the Department continues to signal two national requirements that are prerequisites for effective homeland security:

- The need for a federal law enforcement agency dedicated to investigating crimes that arise from and are associated with our borders and related border activity, including lawful and illicit commerce, trade and travel. This dedicated, investigative capability provides a critical layer of protection against threats to our homeland and national security that arise from our borders.
- The vigorous enforcement of immigration laws at our borders and throughout the interior, including the continued development of infrastructure and mechanisms needed to swiftly apprehend, detain and remove illegal aliens from this country.

Having reached a more stable organizational and funding level this year, ICE has devoted maximum attention to these objectives.

One of the most significant developments to flow from the unification of the nation's customs and immigration authorities under ICE has been the aggressive application of financial investigative methods to disrupt and dismantle criminal organizations involved in immigration and human smuggling and trafficking violations. By leveraging these authorities, ICE is now identifying and seizing the profits of

criminal organizations that once thrived and generated extensive wealth from violating immigration laws.

Assets seized in immigration-related criminal investigations grew from \$400,000 in FY2003 to more than \$34 million in FY2005. We expect these numbers to increase as ICE special agents identify and uncover more sophisticated immigration fraud, human smuggling and trafficking conspiracies.

In addition, ICE is targeting its investigations to close national security vulnerabilities and to ensure the integrity of our nation's critical infrastructure facilities, including nuclear power and chemical plants, military installations, seaports, airports and other sensitive facilities.

ICE is also moving aggressively to increase the number of our Fugitive Operations teams that target absconders - those persons with a final order of removal who seek to evade apprehension. At the present time, we estimate the absconder population to be more than 550,000. The President's Budget includes additional resources to fund a total of 70 Fugitive Operations teams.

In March, ICE announced another wave of nationwide arrests of violent gang members who are immigration status violators. Since February 2005, ICE has arrested 2,596 gang members from 239 different gangs and has seized 122 firearms. Fifty-four of those arrested were gang leaders and approximately 984 of those arrested were affiliated with the violent Mara Salvatrucha (MS-13) gang. Of the total number of gang members arrested, 586 have been charged criminally for drug, firearms, immigration, and Racketeer Influenced and Corrupt Organizations (RICO) violations. Another 1,855 have been charged with administrative violations of our immigration laws.

We also are strengthening our capacity to pursue those who illegally seek to launder money, especially through the growing use of trade-based money laundering techniques. Criminal enterprises have long misused international trade mechanisms to avoid taxes, tariffs, and customs duties. ICE has created the Trade Transparency Unit (TTU) to identify anomalies in cross-border trade data that indicate potential international trade-based money laundering. By sharing trade data with foreign governments, ICE and participating governments can see both the import and export side of commodities entering or leaving their countries. This facilitates the trade transparency needed to identify and investigate international money launderers and money laundering organizations.

ICE launched the first TTU in Colombia to share information, assess risks, and conduct intelligence-driven, trade-based money laundering investigations. Using U.S. Department of State funding from "Plan Colombia," ICE provided support to Colombian authorities and initiated trade-based data exchanges. U.S. investigative leads are vetted by the TTU and disseminated to ICE Special Agent in Charge offices for investigation, while Colombian leads are disseminated to our Colombian counterparts for investigation. With funding from the State Department, ICE has provided Colombia with 215 computers and other equipment. This has strengthened the Colombian Customs Service's infrastructure modernization project and increased trade transparency to combat trade-based money laundering, drug trafficking, contraband smuggling, tax evasion and other crimes involving Colombia and the United States.

ICE's enforcement of the Bulk Cash Smuggling law does not end at our Nation's borders. In August 2005, ICE partnered with CBP and the State Department to initiate a joint training program for our Mexican counterparts on the methods used to smuggle bulk currency. As a direct result of this hands-on training, our Mexican counterparts seized during pulse and surge operations conducted over a 9-month period over \$30 million in cash and negotiable instruments that violated Mexican currency-reporting laws. The day after this highly successful joint operation—known as Operation Firewall—was launched in August 2005, we witnessed the single largest bulk cash seizure in Mexico: \$7.8 million dollars. ICE has worked with our Mexican counterparts to tie these seizures to larger investigations conducted in Mexico, the United States, and other South American countries. Building on the proven success of this initiative in Mexico, pulse and surge operations commenced again in March 2006, resulting in two seizures totaling over \$7 million dollars within the first few days of the operation. Separate from our work with Mexican authorities, ICE continues to provide training programs to nations throughout the world in efforts to combat bulk cash smuggling. The State Department continues to fund these international initiatives and we are grateful for its support.

ICE is also a critical partner in the FBI led Joint Terrorism Task Forces (JTTFs), contributing significant resources second only to the FBI, in our Nations fight against terrorism.

Collectively, these ongoing ICE missions, programs and operations strengthen our border, homeland and national security and underscore the progress made since

ICE's creation in 2003. I credit the perseverance and professionalism of the men and women of ICE for achieving so much in three short years. Preserving ICE as an independent agency—capable of focusing directly upon its core mission and operations—is critical to our continuing efforts to protect the American people from criminal and other threats that arise from our borders.

CONCLUSION

As the Department of Homeland Security's principal investigative agency, ICE is demonstrating that it is uniquely equipped to enforce our nation's laws and to protect the American people.

Although ICE is a new agency, we aggressively apply our unified immigration and customs authorities to identify and address vulnerabilities affecting the borders and the Nation's homeland and national security. At the same time, we bring to this effort the best of our former agencies' expertise, cultures, and techniques as we continue to improve the efficiency of this new federal law enforcement agency. In case after case, ICE agents, officers, analysts, and other personnel are putting into practice, on behalf of the American people, the powerful advantages that flow from our unified authorities. The result is a strong and growing contribution to the Nation's border, homeland and national security.

While the Department has made great strides in fostering a high degree of cooperation and synchronization between ICE and CBP for coincident mission areas, both agencies have succeeded in focusing on their respective core mission areas that do not require high degrees of coordination. We continue to demonstrate the significant value of retaining both agencies' independence, while simultaneously producing homeland security benefits derived from close inter-agency cooperation.

The men and women of ICE are grateful for the opportunity to serve the American people and, on their behalf, I thank this subcommittee, its distinguished members and Congress for your continued support of our work.

I would be pleased to answer your questions.

Mr. ROGERS. The Chair now recognizes Ms. Deborah Spero, Acting Commissioner for Customs and Border Protection of the U.S. Department of Homeland Security.

We welcome you and look forward to your statement.

STATEMENT OF DEBORAH J. SPERO

Ms. SPERO. Thank you, Chairman Rogers, Ranking Member Meek and distinguished members of the subcommittee. It is an honor to appear before you today to discuss the cooperative working relationships between U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement. I am very pleased to be here today with my colleagues, Assistant Secretary Baker and Assistant Secretary Myers.

I would like to begin just by expressing my gratitude to the subcommittee for the strong interest you have shown in CBP. I particularly appreciate the time you have taken in your oversight role to visit our front-line offices to see firsthand the challenges we face in securing our borders.

I am confident that, working with the Congress, CBP and ICE can succeed together in our responsibilities to the American people.

As you know, as part of the process through which the Department of Homeland Security was established about 3 years ago, CBP was formed by joining much of the Customs Service with the Border Patrol, border inspection elements of the Immigration and Naturalization Service and border inspection personnel from the U.S. Department of Agriculture. This new agency had a critical priority mission to prevent terrorists and weapons of mass destruction from entering the United States.

To succeed at this mission, we in CBP focus on what we call our two twin goals: the goals of securing our borders at and between

the ports of entry, while simultaneously facilitating legitimate trade and travel.

Because personnel and operational relationships already existed between the agencies, CBP's close working ties to ICE at both the managerial and the field levels were already in place when DHS was created. We have now institutionalized these relationships at the headquarters level, and we continue to support each other effectively while maintaining the necessary autonomy of the two organizations, each with their unique and important missions.

I want to strongly second Assistant Secretary Baker's remarks about the Second Stage Review, or 2SR. The new DHS organization which resulted from 2SR provides Secretary Chertoff with direct oversight of the agency's operational components. Working closely with component leadership, the Secretary can ensure that each agency's operations are focused on the Department's priorities, that agencies coordinate appropriately, and that agency heads are held accountable for mission accomplishment.

And, as noted, under the Secretary's direction, the CBP-ICE Coordination Council was established and meets regularly; and we think this Council is an excellent forum for discussion of our shared objectives in both policy and operational issues.

At the field level, there is extensive interaction and cooperation between ICE and CBP. Within CBP, both the Office of the Border Patrol and the Office of Field Operations have established memoranda of understanding with the ICE Office of Investigation; and these MOUs provide that the ICE Office of Investigation has primary responsibility for investigations resulting from the work of CBP's border interdiction operations.

Under these MOUs, frequent discussions are held between CBP's Border Patrol sector chiefs and field directors and the ICE special agents in charge and resident special agents in charge on operational planning, communications and information sharing. These discussions and a strong commitment to cooperation have resulted in significant improvements in the joint capabilities of both agencies and numerous successful joint operations.

In the interest of time, I won't go into these operations, but there are many of them; and we would be more than happy to provide additional information.

In addition to the operational examples, which we would like to discuss at some later point in time, there are many other areas where CBP and ICE collaborate closely with great success. Through regular meetings, joint planning, and real-time coordination, CBP and ICE are working together on the full range of operational and information-sharing activities required to ensure optimal mission achievement by both agencies. In fact, over the last year we have initiated new information-sharing efforts to include more effective protocols and more cooperation in the area of terrorist-related threat warnings, joint strategies for utilization of biometrics, sharing of daily incident threat analysis, pursuit of joint training opportunities, coordinated intelligence-driven special operations, JTTF program alignment, and international notification protocols.

Thank you very much for the opportunity to testify before you today, and I will be happy to answer any questions you have.

Mr. ROGERS. Thank you, Ms. Spero.
[The statement of Ms. Spero follows:]

PREPARED STATEMENT OF DEBORAH J. SPERO

MAY 11, 2006

I. Introduction

Chairman Rogers, Ranking Member Meek, Members of the Subcommittee, it is a privilege to appear before you today to discuss the cooperative working relationship that U.S. Customs and Border Protection (CBP) has with its sister agency, U.S. Immigration and Customs Enforcement (ICE).

I want to begin by expressing my gratitude to the Subcommittee for the strong interest you have shown in CBP and ICE, and the time you have taken in your oversight role to visit our front line officers to see first hand the challenges we face in securing our borders. I am confident, working with the Congress that CBP and ICE can succeed together in our responsibilities to the American people.

II. Creating the Department of Homeland Security

Please allow me to briefly cover some history of CBP and its role in the Department. In March 2003, components of 22 different Federal agencies were brought together to form the Department of Homeland Security (DHS). Recognizing the need to have a single border enforcement agency, CBP was formed by joining much of the U.S. Customs Service, with the Border Patrol, border inspection elements of the Immigration and Naturalization Service, and border inspection personnel from the U.S. Department of Agriculture. CBP acts as the guardian of the Nation's borders, safeguarding the homeland by protecting the American public against terrorists and the instruments of terrorism, while enforcing the laws of the United States and fostering the Nation's economic security through lawful travel and trade.

In addition to CBP, the new Department included six other operational component agencies (ICE, the Transportation Security Administration, U.S. Citizenship and Immigration Services, the U.S. Coast Guard, Secret Service and the Federal Emergency Management Agency). All seven agencies were changed to some degree by the creation of DHS, and all had to develop new working relationships with each other. Since ICE and CBP shared legacy portions of both the U.S. Customs Service and the Immigration and Naturalization Service, and because the missions of the two agencies formed a significant continuum of law enforcement, these two agencies needed to create particularly strong cooperative networks, from headquarters through the field commanders to the front line officers. I am pleased to report today on the details of the significant progress we have made in this effort.

While in the midst of forming effective working relationships with ICE and the other DHS component agencies, the newly formed CBP also had to launch a parallel effort internally to bring together four different work forces inherited from the legacy agencies. At the ports of entry, where inspectional staff from several agencies were merged into one organization, we established as our goal "One Face at the Border," a comprehensive approach to forging the disparate elements of the legacy agencies into a unified and effective workforce, focused on the new anti-terrorism mission. Between the ports of entry, the Border Patrol was also facing unique challenges, re-focusing on anti-terrorism as its priority mission and entering a period of rapid growth to meet new mandates to gain more effective control of the border and improve interdiction of illegal immigration.

Our transition management process focused on the changes needed to bring CBP together as one agency with a single culture and one mission to which all our personnel felt a sense of commitment and dedication. We fully utilize the unique talents and expertise of all personnel from the legacy agencies to achieve this mission.

In October 2004, while continuing to move forward on "One Face at the Border" and other unification initiatives, Secretary Ridge moved the air and marine force from ICE to CBP, combining two operational entities with similar missions into one agency with a single chain of command and a clear, coordinated mission set. Specifically, ICE's Office of Air and Marine Operations (AMO) was moved to CBP, where it was subsequently consolidated with the Office of Border Patrol's air and marine units to form Customs and Border Protection Office of Air and Marine (OAM), the single largest unified law enforcement air force in the world.

Within a three year period, CBP has been simultaneously managing three separate major reorganizations: the move to a new Department, the consolidation of four legacy work forces, and the addition and unification of major new operational air and marine forces. While it is often said that mergers of this magnitude take many years to be fully institutionalized, we are enjoying solid success and realizing in-

creasing benefits on a daily basis from the synergy and improved operational effectiveness of the new organization.

III. ICE–CBP Headquarters Coordination

Because personal and operational relationships had already existed between the legacy agencies, CBP's close working ties to ICE at both the managerial and field levels were already in place when DHS was created. I would like to describe how we have institutionalized these relationships at headquarters to continue to support each other effectively, while maintaining the autonomy of the two organizations, each with a unique and important mission.

Under the Secretary's direction, the ICE–CBP Coordination Council was established. The Council meets regularly and has made significant progress on policy and operation issues where senior decision makers' engagement has produced rapid agreements on joint solutions. Chaired by the CBP Commissioner and the ICE Assistant Secretary, the Council's core membership includes the operational leadership of both agencies:

CBP	ICE
Acting Commissioner	Assistant Secretary
Assistant Commissioner, Office of Field Operations	Deputy Assistant Secretary
Chief, Office of Border Patrol	Director, Office of Investigations
Assistant Commissioner, Air and Marine	Director, Office of Detention and Removal
Director, Office of Policy and Planning	Senior Policy Advisor
Director, Office of Anti-Terrorism	

Through the Coordination Council, CBP and ICE are clarifying guidance to the field on referring cases for investigation and handling seized property, and we also agreed on a joint response to the recommendations in the DHS Inspector General's report entitled, *An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement*. Under the Council's leadership, we developed a strategy for addressing an ICE requirement for temporary CBP augmentees to cover a short-term personnel shortage. Additionally, we have defined each agency's roles and responsibilities in meeting DHS requirements at our overseas embassies and consulates.

The Air and Marine Operations Council is another major forum for CBP/ICE coordination on critical operational issues. The Air and Marine Operations Council is a vital part of the new command structure designed to make CBP OAM more flexible, effective, and efficient against the various threats it combats. Members of the Air and Marine Operations Council include the Commissioner and Deputy Commissioner of CBP, the Assistant Commissioner for CBP Air and Marine, the Chief of the Border Patrol and the Director of the Office of Investigations (OI) within ICE. The Air and Marine Operations Council makes recommendations on key operational and tactical control matters, ensuring that a balanced process is in place for addressing the varied mission requirements our aviation program must satisfy.

IV. CBP Border Patrol and ICE Office of Investigations Coordination

At the field level, there is extensive interaction and cooperation between ICE and CBP. In 2004, the CBP Office of the Border Patrol (OBP) established a Memorandum of Understanding (MOU) with the ICE OI. The MOU established that ICE OI has primary responsibility for all investigations into border interdiction/apprehension operations that CBP OBP conducts between the ports of entry, with the exception of narcotics. Under CBP's Title 21 Delegated Authority, the Drug Enforcement Administration (DEA) has the first right of refusal for investigation of narcotics cases. When CBP OBP makes a referral to DEA, it provides details of the referral and pertinent information and intelligence to ICE. Under the MOU, frequent discussions are held between CBP OBP Sector Chiefs and ICE Special/Resident Agents in Charge on improving operational planning, communications and information sharing. These discussions and a strong commitment to cooperation have resulted in significant improvements in the joint capabilities of both agencies and numerous successful joint operations:

- A Border Enforcement and Security Task Force (BEST) has been created in Laredo, Texas, and in March, a second BEST began in Tucson, Arizona. The

BESTs are new arrangements for sharing information, developing priority targets, and executing coordinated law enforcement operations, not only between ICE and CBP, but with State and local law enforcement as well, with the goal of dismantling border criminal organizations.

- In several Sectors, such as El Centro, Del Rio and San Diego, Border Patrol agents have been assigned to ICE Human Trafficking Units to promote improved information sharing and better operational coordination against human smuggling organizations. Co-location of our personnel has been instrumental in breaking up several of these gangs and improving our joint ability to apprehend other-than-Mexican illegal aliens, as well as Special Interest Aliens.
- Local ICE offices periodically assign their Senior Intelligence Research Specialists (IRS) to Border Patrol Special Intelligence Units to improve information exchange and share best practices on intelligence support to operations. This cooperation has contributed directly to improved operational success against human, narcotics and weapons smuggling operations.
- In San Diego, the ICE Special Agent in Charge and Border Patrol Chief Patrol Agent have agreed to use the San Diego Sector Command and Control Intelligence Coordination Center (CCICC) as the conduit for the dispersal of real time and other intelligence from BP to OI and vice versa. All notifications to ICE OI are coordinated through the CCICC and ICE OI has committed to assigning an intelligence analyst to the center for information sharing.
- The Temecula Border Patrol Station has entered into an agreement with the ICE OI ASAC for Riverside/San Bernardino counties to collocate a Border Patrol intelligence agent in their office. The agent facilitates information sharing for joint enforcement operations for alien smuggling/load houses in the Station's area of responsibility. When ICE has a target location they would like to investigate in this area, they pass the information to the Temecula Station and provide a case agent to support an enforcement action.
- Operation Streamline is an outstanding example of how close cooperation between ICE's Detention and Removal Operations Office and the Border Patrol has produced a highly successful operation. To support this special operation, the Border Patrol has assigned two Supervisory Agents to the San Antonio DRO office to assist in travel coordination for aliens apprehended, prosecuted, and removed. As part of the multi-layered enforcement effort, the Border Patrol and DRO have worked hand-in-hand preparing and coordinating removal proceedings for those aliens requiring appearances before an immigration judge.
- Recently, CBP OBP and ICE cooperated on three high profile operations in New Orleans. CBP OBP Agents manned boats to intercept a drug and alien smuggling load that originated in Colombia, and CBP OBP Agents assisted ICE with the interception of smuggled Chinese workers who were being transported to a place of employment. Additionally, ICE and CBP OBP worked together with the New Orleans Police Department to provide security during the recent Mardi Gras celebrations.

These are but a few examples of the constant coordination and support at the field level between CBP's Office of Border Patrol and ICE.

V. CBP Office of Field Operations and ICE Office of Investigations Coordination

The CBP Office of Field Operations (OFO) and ICE OI signed a MOU in 2005, which has significantly improved mutual support, operational planning and information exchange between the two organizations. Recognizing that ICE OI is the primary contact for investigative matters for CBP OFO, the MOU created a nationwide council of CBP Directors of Field Operations and ICE Special Agents in Charge. This council manages a range of interactions that require operational coordination across both agencies. The MOU has provided a framework for personnel exchanges and improved operational success:

- CBP Officers at land border ports, airports or seaports refer narcotic seizures, currency seizures, and trade fraud interceptions to the local ICE duty agent, who responds with the full investigative capabilities required to prepare these cases for Federal prosecution. This is the most typical interaction between CBP OFO and ICE, and occurs on a daily basis throughout the nation.
- ICE personnel have been assigned to the CBP National Targeting Center (NTC) to support bilateral cooperation on interdiction of attempts to enter the United States by potential terrorists. Working from the NTC, ICE has access to all information on attempted illegal entry of people or goods, and can focus investigative efforts more precisely.

- CBP and ICE have clarified their roles and responsibilities on the FBI-led Joint Terrorism Task Force (JTTF) and have enhanced the complimentary role the two agencies play in that organization. CBP and ICE jointly participated in a conference on JTTF operations in December, 2005, which laid the foundation for new operational guidance on mutual support through the JTTF.

- Joint CBP/ICE planning and implementation of special operations has become a highly sophisticated and successful example of how the two agencies work together to improve national security. Two recent examples of such operations include:

- Operation Firewall—a bulk-cash interdiction operation coordinated through the ICE Financial Investigations section and the CBP Tactical Operations Division. The purpose of the operation is to intercept drug proceeds in large quantities. In addition to coordinating this operation with DHS, the International Affairs sections of both agencies also coordinated with State Department and the Government of Mexico. As part of this operation, training is being provided to Mexican law enforcement officers in interdiction techniques, which recently resulted in the largest currency seizure in Mexican history (\$7.8 million).

- In close cooperation with the ICE-led Operative Blackjack taskforce, the Narco-Violence Initiative was conducted from August 2005 to January 2006, at the Port of Laredo. Driven by a new approach to using actionable and tactical intelligence in the field, the operation has been highly successful in apprehending of criminal gang members linked to border violence in Nuevo Laredo, Mexico, and Laredo, Texas, as well as interdicting narcotics, aliens and bulk cash smuggling activities.

Once again, these are but a few examples of the day-to-day coordination between CBP and ICE at our nation's ports of entry.

VI. Conclusion

Through personnel exchanges and extensive joint planning, CBP and ICE are coordinating today on the full range of operational and information sharing activities required to ensure optimum mission success by both agencies. The new DHS organization, which resulted from Secretary Chertoff's Second Stage Review, has provided DHS leadership with enhanced oversight that ensures that the two agencies focus effectively on their respective core missions of border interdiction and investigation, while mutually supporting each other where the missions overlap. Through the current organizational arrangements, CBP and ICE can focus on their core missions, while working together through numerous institutionalized arrangements for co-operation and joint planning.

Mr. ROGERS. We are probably going to be called for a series of votes, and we will be gone for about an hour, so I am going to try to keep my questions short and urge the other members to do the same and follow up with written questions that we may have, so we can let you go before we leave for this series.

Ms. Myers, I understand that since the separation of the two entities that ICE has been able to clean up its financial house and improve significantly their accounting problems that were a real problem initially. You stated in your opening comments that you all had measured improvements, and you gave a couple examples, but can you elaborate on the measurements that you are taking, the things that you can point to that objectively demonstrate why the system is working the way it is structured at present?

Ms. MYERS. Thank you, Chairman Rogers.

Absolutely, there are a number of things that show how ICE is achieving results.

On the financial front, we are making substantial steps in improving our audit status. I was able to name the agency's first chief financial officer on my first day, as well as a deputy assistant secretary for management.

We have also greatly improved our investigations in a number of areas. For example, on the work site enforcement front, in terms of criminal cases against employers, we went from a very small

number to 123 last year. I expect the number of arrests to be even higher in this year.

In terms of cases involving document and benefit fraud, we have multiplied those numbers. Our conviction numbers remain very high, and we are seeing a lot of cross-integration. For example, we often do investigations into in-bond diversions and to see if there is a problem there. We started finding that, actually, while we are doing the fraud investigations, we are finding a lot of illegal aliens. So having agents that are cross-trained to see both sides of the picture has been very helpful in more effectively carrying out our core missions.

It is the same thing in export enforcement. There are individuals that are here legally, maybe under some sort of a visa status but may be working in an area where they are not supposed to have access to licensed technology. This is an area where Immigration and Customs blends and where we are able to really dedicate our authorities and where our members will be.

Mr. ROGERS. You made reference to feedback that you are getting from your folks in the field about the current structure and it being favorable. Can you give some examples of things that you can point to or feedback that you are getting now that didn't exist a year ago or a year and a half ago when these criticisms of the current structure really were loudest?

Ms. MYERS. Certainly. I have been listening to comments across the board from agents in the field, everything from their concerns with the finances to concerns with the kinds of cases that they are doing.

Mr. ROGERS. Do you still get comments from folks in the field saying we need to go back to be a single entity?

Ms. MYERS. Frankly, I do not really get comments like that. I do get comments of frustration of other sorts of things; for example, being frustrated about how long it took to go through the hiring process. We have had a financial situation in this agency, so we had a number of procedures set up to protect us in the hiring process. What I was able to do, because of the agency's strengthened financial status, is remove one of those steps from the waiver board.

Another thing they complained about, rightfully so, is some of them were in hardship locations, being unable to move. What I was able to do, given our improved financial status, is make it available for agents to be transferred off the border in these hardship locations immediately; and that is improving morale.

To be frank, I think integration is better in some locations than others. The agency is still on its way, but I think our numbers point in a positive trend.

Mr. ROGERS. Ms. Spero, for those folks who are advocating that we merge CBP and ICE, what is your initial response in plain language as to why that is a bad idea, if you think it is a bad idea; and, apparently, from your statement, you do.

Ms. SPERO. I do. I think it is a very interesting phenomenon that we are undergoing. In many ways, if you asked this question in 2003, the answer might be a little different. Because when we first set up the two agencies, really breaking up INS into three and

moving a portion of it to ICE, there were very, very difficult times for our former Customs employees.

I am a former Customs employee. It was wrenching for people who had committed their careers to one agency to say now you are doing something else. And I think that is just an inevitable part of a huge organizational change, that people have a hard time giving up something they know and love and learning to accept a new world, which is part of this merger and culture change.

I do believe, though, we can't use a 2003 issue to solve or address 2006 issues. I think we have come a long, long way; and my personal opinion is that the two organizations are working well together and that a merger is not just the disruption, which we do believe would be highly disruptive, to me, it would be the wrong way to design an organization. It would be an enormous, enormous scope of authority for one individual to try to manage that huge range and hold everybody accountable.

I think, working in an organization as a manager for as many years as I have, I think there is the right size that one manager can handle. I think we are individually—our two agencies are at that right size, and I would worry about combining them.

Mr. ROGERS. Thank you very much.

I see my time is up. I recognize the ranking member, my friend and colleague from Florida, Mr. Meek, for any questions he may have.

Mr. MEEK. Thank you.

I will go back to page 2 of my opening statement, Mr. Chairman: Detention and removal operations were hindered, interdiction and investigation capabilities have been weakened, and there was a lack of coordination of intelligence activity. Those are the three points out of the Inspector General's report.

It takes me back to my first question, for whoever on the panel that wishes to answer the question: Understanding the response to the Inspector General's report as relates to development of a Coordinating Council, who are the representatives amongst those members on the Coordinating Council? Are there rank and file CBP inspectors or Border Patrol agents, ICE investigators, or detention and removal officers? Are they included in this Coordinating Council? Do they sit on this Council?

Ms. SPERO. Either one can handle, because we both co-chair the Council. It is composed deliberately of senior leadership, not because there should not be other forums for rank and file, but this deals with high-level policy issues. Both Assistant Secretary Myers and I work very hard on this Council with just a select few of our key operational leaders.

Mr. MEEK. I am more concerned about what happens at 3:00 in the morning or 5:00 in the morning on the border. Who can best bring to light at the Council level of what kind of coordination we actually need to protect our borders? With all due respect to the seniors who are there, I am saying we visit these sites. We are not actually part of an ICE investigation or part of a CBP investigation or what have you.

Ms. SPERO. The purpose of the Council is not for that kind of case operational coordination, so it is a different kind of structure. It is more of a governance body, if you will, at the local level. In

the middle of the night or any time, Border Patrol agents are in constant contact with ICE agents and vice versa in accordance with the protocols that we have set up.

Mr. MEEK. Part of the response to the correspondence that we received from the Department is saying that this was to help streamline what goes on on the front end, and I am concerned by the fact that they are not on it. We can't assure that these agreements have been really communicated to the folks throughout the Department.

The chairman asked for some feedback. We are saying that we are getting feedback from the field, but it is not being identified, unless it is at the Secret or Top Secret level or ongoing investigation or saying this is a lot better now that we have this council structure in place.

I am just trying to figure out even among the department that works so closely together—and there has been a lot of discussion here about memoranda of understanding between two entities that are in the same department—how much time is being spent on those memoranda of understanding? And if everything is going so well, we are still receiving phone calls, e-mails and information saying that they are not.

I mean, I am trying to really get down—and maybe I may get more in the next panel, but I am really trying to getting the Department to say that, listen, we are getting everything that we need to know at our level, and I can assure you, Congressmen, that we are and making sure that operations are running smoothly.

I am more concerned—I am not concerned as much—I am not concerned about right now as I am 1 or 2 years down the road. Because this committee is hot and heavy on the question of should we merge or not. What happens when we say okay, well, we believe everything that people are telling us and from what you understand and we understand and let's move on to the next issue.

I want to hear more about—give me something to run with. Because I don't want this panel to go on and the next panel and say, Congressman, you are absolutely right. It is not bubbling down, not helping us on the front line, and what we are hearing from the people that work with us, that there is a problem.

Mr. Chairman, I want to let you know, to get an active Border Patrol or ICE agent here to grab the mike, many of them feel they will be making a career decision if they do so. That is just a normal kind of situation.

But if you can give me a little feedback, quickly. I am sorry I took so long.

Ms. MYERS. Ranking Member Meek, if I could elaborate a little bit. Whenever I hear of a problem or a complaint on coordination either with CBP or with the Coast Guard or DEA or someplace else, we have our managers look into it. What the Council is assigned to do is address if we see systemic problems occurring.

For example, just yesterday, we were talking about some new issues down on the border; and it just happened to be that the Border Patrol sector unit and the others were all in Washington, D.C., so they got together to try to come up with a field level plan to address it and presented it to us.

That is the kind of initiative we are driving down from ICE, I believe they are driving down from CBP, is it perfect—no, we think

the trend is up. We think there are improvements that are being made.

Mr. MEEK. Madam Secretary, my time has run out, but I believe, between when the vote is called—I know my other two colleagues will get there in 5 minutes. If we get a chance to come back around, or if we don't, I would appreciate if your staffs stay around for the second panel. Because it will help us if something is said in the second panel that needs to be addressed, because we are at a very pivotal time in making some decisions on what we are going to do.

It will be good for the Department to send us something in writing to our staff or to us to let us know your position on this, because I am pretty sure that they will let us know their position on what was stated here in the first panel.

I appreciate all of you coming. Thank you, Mr. Chairman.

Mr. ROGERS. I thank the gentleman.

Also, I would note that the second panelists are here, so I would be interested in their perspective on what they are hearing now when they take their chairs.

The gentleman from Indiana, Mr. Souder, is recognized for any questions he may have.

Mr. SOUDER. First, let me say we can never express enough our appreciation to the people who work in CBP and ICE, that all this is interesting discussion, but they are out there every day taking risks and working hard. We appreciate every drug bust they make, every person they apprehend, every person they discourage from illegally entering the country. That needs to be said.

I also appreciate that, in fact, that we have had increased success. Quite frankly, we should have increased success, because we spent millions of dollars and hired lots more people and are presumably somewhat better organized. What we are really debating here is not radical overhaul but how an organization is structured and having a management difference of opinion of how best to do that.

Clearly, GAO and others outside don't share your view that it is just managerially clear cut here. There is a legitimate debate. What you would clearly have is two divisions underneath. The question is, you already have the Coast Guard, we are trying to figure out TSA, and all these different agencies with different brands and is this part of ICE and CBP really a separable brand or should it be integrated? Because you already have a multi-tasked Coast Guard.

This would be like separating the Coast Guard into divisions: fisheries, operations, rescues, and for narcotics. We don't separate them so they can have a unified structure to deal with their fungible-type problems.

Even though these agencies are bigger, I understand they are bigger, you would still need the subpart. The question is, why do we have to create all these new offices linking something that should be like the Coast Guard, which is a functional border agency?

To me, the Shadow Wolf question keeps coming back. Because you seem to say that we are so rigid in CBP and ICE that we don't have a way to accommodate special cases.

I am not from Arizona. I am not Native American. I have a German background. I believe it is very important to have these kind of units. But it is not just that.

When I was up in Vermont and upstate New York, I asked how many agents there spoke French. Because, clearly, a big percentage of the people across from Maine, Vermont and parts of New York speak French. Do you have any incentives to train to speak French? Are there any criteria for CBP that come up in that area that you understand the language across from you.

One guy did speak French all of his life, but he couldn't pass the test because the French they speak doesn't meet the government standards of how we have this formal French.

So the question is, would you have, in an area where there is a higher risk of historic smuggling operations across from Maine, special type things that might blend between ICE and Border? Because it is not enough to say, oh, that is investigation. No, it is not investigation. When they come across the border and there is a package there, they are supposed to call up and get a language interpreter if they don't know.

But when people across from you speak French, it makes some sense to have a specialized unit. But it is not just that. It is across from Buffalo and Detroit are where most of the Arabic-speaking people are going to come across. But we don't have any kind of idea of special incentives or how to accommodate special units that work on those borders that are doing both important functions, picket fence and monitoring at the crossings and official ports of entry, picket fence in between and trying to discourage people from coming in and detaining them if they do, and the investigations. It is the same function. Some of it goes back and forth.

Now if you can accommodate some sort of special unit, then it makes some sense. But if you are so rigid that everybody has to either be this, which is a legacy border patrol person whose job is to discourage people from coming through, or an ICE person, which is a legacy investigatory function, you are going to fail.

I would like to hear some specific response on the Shadow Wolves in particular and what I raised here with other language questions where you have preponderance of challenges that are unique.

Ms. SPERO. Thank you. I would be glad to start on that first question of the Shadow Wolves.

I certainly agree we need to be flexible. Now 3 years into our new agency set-up, I think it is more than time for us to take a hard look at anomalies, things that don't necessarily fit. And with that in mind, Assistant Secretary Myers and I have had a series of conversations about what is the best placement for the Shadow Wolves. I have to say we haven't quite finished our conversations, but we would be glad to report back to you at such time as we have finished the discussion. We are keeping an open mind on this.

Ms. MYERS. If I could just add to Commissioner Spero's comments, I think the Department fully agrees with you that we need to be flexible and think about things in different ways; and I do think the Secure Border Initiative and the leadership of the Secretary is forcing us to do that, not only think about where do we

need to be more creative in dealing with CBP but with, for example, citizenship and immigration services.

ICE is partnering with USCIS in a number of ways we never did before. We need to. It is a problem if we have illegal gang members applying for benefits. We needed to partner up closer. I think the Department's leadership is forcing us to be more flexible and think about things in more creative way.

With respect to language, we have added into all of our announcements now that foreign language is desirable, to try to encourage native speakers of different languages, because we believe that would be very useful.

Mr. SOUDER. Do you grant that some parts of the country are more need than others or are you going to put a French person in Montana or down in New Mexico?

Ms. MYERS. Certainly it is needed more in certain parts of the country than others, but I think having foreign language fluency is ideal for everyone, frankly, in our agency, so we are definitely encouraging that.

Mr. ROGERS. The Chair recognizes the gentleman from Texas, Mr. McCaul, for any questions he may have.

Mr. MCCAUL. Thank you, Mr. Chairman.

I want to focus specifically, and it may not be the integration of CBP and ICE but rather on these border enforcement and security task forces. I am from Texas, and I have been down to Laredo, and I visited with them, and I am trying to recall if these task forces included the local sheriffs.

Ms. MYERS. They did.

Mr. MCCAUL. This is sort of a pilot program in Laredo at this time?

Ms. MYERS. It was a pilot in Laredo when it was called Operation Blackjack. Secretary Chertoff saw that pilot, saw the success between ICE and CBP, also DEA, ATF and State and located—and the intelligence community—and decided to work with DOJ to expand it. So we have expanded it into the Tucson sector, kind of a brand new one starting up, and we are working now on our third. They are intelligence driven, so we look to what is the threat in that area. In Laredo, of course, it is cross-border violence; in the Tucson area, more alien smuggling. Our third location may be something different.

Mr. MCCAUL. I used to work at Justice with the Joint Terrorism Task Force. Is it similar to that kind of model; is that what you are trying to replicate.

Ms. MYERS. It is similar to the JTTF, although—and both our agencies have large participation on the JTTF, although this is designed to be a little more flexible and intelligence-driven in the front end in terms of focusing on something as specific as an intelligence threat in a particular area. And so a BEST is not formed until an intelligence assessment is completed, and it is based on that, that a BEST is formed. It is not in competition with the JTTF.

Mr. MCCAUL. And the HIDTA, the High Intensity Drug Trafficking Areas, is it similar to that concept, do you think, or not? How would it compare to HIDTAs?

Ms. MYERS. HIDTAs take various shapes and sizes, from my experience in different places, so I think in some of the more successful HIDTAs, it would certainly model that type of a task force, but it would depend on a particular HIDTA you are referring to.

Mr. MCCAUL. Would you see any utility to developing a high intensity border area that would have an enforcement piece to it, that incorporates a multiplier effect of Federal, State and local law enforcement?

Ms. MYERS. From my personal view, I think that is something that we should definitely look at. I think that is what the BESTs are designed to try to do. And I think we should think about all sorts of creative ways to address these problems.

Mr. MCCAUL. We can appropriate 7,000 more Border Patrol, but really, the locals can provide a multiplier effect. And we have Operation Linebacker, which you are familiar with, which is more share-driven; Stonegarden, which is more Border Patrol. I met with Carl Rove this morning, and he talked about Operation Streamline, and unfortunately, I didn't get to stay through the whole presentation. Mr. Baker, you may be in the best position to comment on Streamline. His view is that we have had great success with this pilot program so far.

Mr. BAKER. We have. It is essentially a zero-tolerance approach to people who cross the border. Everyone who crosses the border in a section of about 150 miles is prosecuted or serves time, 30 or more days in jail. The result of that is there has been a great drop in border crossings in that area. And remarkably, the actual number of cases that have had to go to trial has not gone up substantially so that the commitment of resources by the Justice Department has been manageable, and we are very, very pleased with the Justice Department's participation in that and are looking for ways to expand it. It requires cooperation from the U.S. attorney in the area, great cooperation from the courts. We had all that in Operation Streamline, and I hope we can get it elsewhere.

Mr. MCCAUL. Is that in the Del Rio sector, Streamline?

Mr. BAKER. Yes.

Mr. MCCAUL. And I guess most of them pled guilty, so you didn't have a trial?

Mr. BAKER. Yes.

Mr. MCCAUL. In terms of resources with prosecutors and judges, they were able to bear on that?

Mr. BAKER. Exactly. I would say the caseload has not, as I said, increased, even though we have steadily expanded from about 5 miles of the border to more than 150.

Mr. MCCAUL. Is there any plan to basically develop that—expand that all across the southwest border?

Mr. BAKER. We would love to do that. It would require careful coordination with the Justice Department, because we are really spending lots of their resources, and I think coordination with the courts as well because, by and large, Federal courts are reluctant to handle masses of what they view as small cases. But I think given the success of Streamline, I am hopeful that we can get that cooperation.

Mr. McCAUL. Last question. It seems to me that CBP seems to favor Stonegarden over Linebacker. Can you articulate, is that true, number one? And if so, why?

Ms. SPERO. I am not sure that we do. I would have to look into this a little more and get back to you. I think we support both. I think they are different, but we are very supportive of both. I would be glad to take a look and get you more information on that.

Mr. McCAUL. That would be great.

Thank you, Mr. Chairman.

Mr. ROGERS. I appreciate very much you being here. I hate that this vote has been called because I have many more questions. I know that my colleagues do, but your input has been very valuable to us and helps us in this decision-making process.

I would remind each of you that we leave the record open for 10 days, and I know that I will be submitting additional questions to each of you, and I would ask that you respond to those in writing, not only for me, but for the other members who do have additional questions.

And with that, we will dismiss the first panel, and thank you for your attendance in being here. And we will recess for one hour and return for our second panel at that time. And with that, we are in recess, thank you.

[Recess.]

Mr. ROGERS. This subcommittee will come back to order. And we convene our second panel. And I want to apologize for the delay, but thankfully, we are through for the day over there, so we won't be bothered again with having to leave.

Mr. ROGERS. I want to call our first witness, who will be Mr. T.J. Bonner, who is back before us. And we are proud to have you, Mr. Bonner, as president of the National Border Patrol Council, and we look forward to your statement.

And I would remind all of you the same thing, your entire statement will be put in the record. If you want to give an abbreviated version, that would be great.

Mr. Bonner.

**STATEMENT OF T.J. BONNER, PRESIDENT, NATIONAL BORDER
PATROL COUNCIL, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES (AFLO-CIO)**

Mr. BONNER. Thank you, Chairman Rogers, Ranking Member Meek. It is, again, an honor to be in front of this subcommittee discussing this important topic.

The events of 9/11 should have served as a wake-up call to America, and to many people it did. It occasioned the creation of a brand new department that was supposed to ensure that another terrorist attack never happened. Thankfully, to this date, it has not, but it doesn't give me warm fuzzy feelings when I look around the Department of Homeland Security and see the lack of coordination, cooperation and communication. One of the glaring examples of this is the artificial distinction between interior enforcement and border enforcement that ICE and CBP have brought about.

The framers of the Homeland Security Act got it right; they called for the U.S. Customs Service to be a separate agency. They called for the division of the enforcement and service parts of the

Immigration and Naturalization Service. The creation of the Bureau of Border Security would have absorbed all of the enforcement pieces of the INS, the Border Patrol, the inspections, the investigations, detention and removal, and agriculture would have remained a separate entity.

The President, in his reorganization plan of February the 4th, 2003, changed all that. He created ICE and CBP and launched the One Face At the Border initiative. Both of these were a mistake, and the only way to fix this mistake is to undo this mistake. It can be done administratively. I don't believe it requires congressional action, but it has hampered the accomplishment of the mission. The mission of the Department of Homeland Security, obviously, its most important function is to ensure that another terrorist attack never happens.

And I sat here and listened to the examples of cooperation given from the previous panel, and I am not going to tell you that good things aren't happening, but they are happening not because of the structure but in spite of the structure. We need to come up with a structure that ensures that the brave men and women who are doing these jobs have every tool at their disposal and that the lines of communication are wide open and facilitate the accomplishment of the mission. The way it works now is, people who have been around for a while know someone else who has been around for a while, and they can pick up the phone and make things happen. That should not be—we should not have to go through this serpentine process to get the mission accomplished. It should be very easy to accomplish the mission because if we get it wrong even once, the terrorists win.

So our recommendation is not to simply merge ICE and CBP because that would leave you with a structure that is still dominated by one agency, and in this case, the Customs Service, not to detract from the importance of that mission. It is a very important mission, but so is Immigration, and so is agriculture.

Our recommendation is that we go back to the way that the framers of the Homeland Security Act envisioned this working, with a separate Customs organization, a separate Immigration organization and a separate agriculture organization, all with seamless chains of command within there, and no artificial barriers between investigations and patrol functions and inspections functions. This, to us, makes the most sense.

And one final note, we have been debating this issue for a number of years now. We believe it is time to get off the dime and take some action. I don't want to be here next year in part six of a hearing to study something that could have been easily resolved now. And the homeland security of this country demands that action be taken swiftly to cure this problem.

I had the pleasure of being in the Rio Grande Valley last week—in fact exactly a week ago—and talking to about 50 of the frontline agents. The current system is not working. We don't have sufficient funding in ICE. Even though everyone is being put into the expedited removal program, some aliens are being held at our Border Patrol stations for 4 or 5 days before we can get them over into property detention spaces. This is simply unacceptable.

The system is broken. It needs to be fixed, and the time to act is now. Thank you for your attention, and I would be happy to answer any questions.

[The statement of Mr. Bonner follows:]

PREPARED STATEMENT OF T.J. BONNER

MAY 11, 2006

The National Border Patrol council appreciates the opportunity to once again present the views and concerns of the 10,00 front-line Border Patrol employees that it represents regarding the organizational structure of the components within the Department of Homeland Security Responsible for Enforcing immigration, customs, and agriculture laws.¹

The Homeland Security Act of 2002 established the Directorate of Border and Transportation Security, and transferred thereto all of the functions, personnel, assets and liabilities of the Customs Service, the Transportation Security Administration, the Federal Protective Service, the Federal Law Enforcement Training Center, the Office for Domestic Preparedness, certain agricultural inspection functions, and the enforcement programs of the Immigration and Naturalization Service. It also called to the establishment of a Bureau of Border Security to establish the policies for performing all of the immigration enforcement functions that were transferred to the Directorate of Border and Transportation Security, and to oversee the administration of such policies. Significantly, the Homeland Security Act as originally enacted did **not** contemplate merging the immigration and customs enforcement functions, but rather maintained a very bright line of demarcation between the two.

On February 4, 2003, the President of the United States Submitted a revised Reorganization Plan to the Congress that created two enforcement bureaus under the Directorate of Border and Transportation Security instead of the single Bureau of Border Security envisioned by the Homeland Security Act. Under the new structure, most of the enforcement resources of the Immigration and Naturalization Service and Customs Service were split along geographic lines and placed into the Bureau of Customs and Border Protection if they worked near the borders or at a port of entry, and into the Bureau of Immigration and Customs Enforcement if they did not. At the time, the Administration launched the controversial "One Face at the Border" initiative that merged the immigration, customs, agriculture inspections functions into a single occupation.

Both of these modifications to the Homeland Security Act were serious mistakes, and significantly hampered the ability of the new Department to carry out its mission. It should have been clear from the outset that tasking two bureaus to enforce the same laws, with jurisdiction divided along meaning less geographic lines, would lead to massive breakdowns in communication, coordination and cooperation. Likewise, it should have been apparent that the requisite levels of expertise would suffer greatly if three specialized occupations were merged into one. While several independent entities now acknowledge the folly of creating two separate enforcement bureaus to enforce the same laws,² there is no similar consensus concerning the problems that will result from the "One Face at the Border" initiative.³ This is probably due to the fact that there are still a fair number of inspectors who retain the specialized skills that they acquired as a result of the previous structure. Once sufficient numbers of these employees leave the agency, however, the shortcomings of the current approach will become all too evident. These three areas of law are each very complex and demand specialized training and experience. Providing employees with small amounts of generalized training and experience in all of these arcane

¹The National Border Patrol Council previously offered testimony concerning this matter before the Subcommittee on Infrastructure and Border Security of the Select Committee on Homeland Security on June 15, 2004; before the Subcommittee on Management, Integration, and Oversight of the Committee on Homeland Security on March 9, 2005; and before the Subcommittee on Immigration, Border Security and Claims of the Committee on the Judiciary on May 5, 2005.

²See Heritage Foundation and Center for Strategic and International Studies, *HDS 2.0: Rethinking the Department of Homeland Security*, December 13, 2004 and Department of Homeland Security Office of Inspector General, Office of Inspections and Special Reviews, *An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement*, November 2005.

³Nonetheless, this issue has been the subject of at least one critical study. See Migration Policy Institute, *One Face at the Border: Behind the Slogan*, June 2005.

fields will yield a generation of mediocre employees who are incapable of the high level of performance that the public expects and homeland security demands.

Far from being akin to a corporate merger, the consolidation of the immigration, customs, and agriculture functions into the new Bureau of Customs and Border Protection was much more analogous to a hostile corporate takeover. The Immigration and Naturalization Service's well-deserved reputation for ineptitude assured that its role would be minimal during the transition and in the day-to-day administration of the new bureau. This was unfortunate, as many of the employees working at that agency were extremely knowledgeable, dedicated professionals who could have helped ensure that the immigration enforcement aspects were a high priority in the new Department. Sadly, this did not happen, and our Nation is at great risk as a result.

Simply merging the Bureaus of Customs and Border Protection and Immigration and Customs Enforcement will not fix the problems resulting from their creation. In fact, it is likely that such a move would exacerbate some of the existing problems. The new bureaucracy would in all likelihood continue to be dominated by legacy Customs Service managers, whose natural predilection will be to continue to emphasize customs enforcement at the expense of immigration and agriculture enforcement because they are much more familiar with customs laws and regulation. In order to undo the harm caused by the Administration's Reorganization Plan, it will be necessary to separate immigration and customs enforcement in addition to eliminating the meaningless and counter-productive geographic distinctions between border and interior enforcement. Likewise, the enforcement of agriculture laws should revert back to the control of the U.S. Department of Agriculture so that specialized experts perform and oversee that function. All of these areas of law are important, and in order for each of them to be properly emphasized, separate structures need to be re-established.

There are understandable concerns that three separate law enforcement entities would detract from the cooperation and coordination that are so essential when employees are working side by side. It is important to recognize that the historic competition between these legacy agencies was largely due to the funding formula that rewarded each agency based upon the number of seizures, apprehensions and prosecutions that were independently undertaken (or for which credit was claimed) instead of those resulting from cooperative ventures. This flaw can be easily remedied by rewarding cooperative efforts (where such efforts are feasible and appropriate) rather than independent actions.

The structure of these enforcement branches of the importance of their missions, it is essential that this not be treated as an intellectual exercise, but rather as an urgent problem that needs to be addressed as expeditiously as possible. It is equally important to ensure that the proposed solution actually cure the identified problems. To this end, the National Border Patrol Council strongly recommends that the law enforcement bureaus within the Department of Homeland Security be restructured along the lines of the statutes that are being enforced. One bureau should be responsible for the enforcement of immigration laws, one for customs laws, and another for agriculture laws. Within each such bureau, a structure that supports the accomplishment of the mission should be created. For example, the immigration bureau structure should include a Border Patrol program, an inspections program, an investigations program, an intelligence program, and a detention and removal program. This would ensure that all of the areas of law within the jurisdiction of the Department are administered and enforced by specialists who are comprehensively trained in a single discipline.

It must also be recognized that even a perfect organizational structure will fail if it is not supported by adequate funding and sufficient numbers of dedicated and experienced employees. All of these matters are under the direct control or strong influence of Congress. In addition to providing the necessary funding, it is important to establish a working environment that is conducive to attracting and retaining the best and brightest employees. The new "human resources management system" being implemented throughout the Department will have precisely the opposite effect. No one wants to work in an organization where their voice is muzzled and they are not treated and compensated fairly.

These goals can be quickly and easily attained through administrative action. Further delays are inexcusable, as each day of inaction leaves our Nation more vulnerable to additional terrorist attacks.

Mr. ROGERS. Thank you, Mr. Bonner.

The chair now recognizes Arthur Gordon, president of the Federal Law Enforcement Officers Association, for your statement. Welcome, Mr. Gordon.

STATEMENT OF ARTHUR GORDON

Mr. GORDON. Thank you. Chairman Rogers and Ranking Member Meek and other members of the subcommittee, I want to thank you for the opportunity to appear before you today to testify on the issues facing ICE and CBP.

I am a full-time Federal agent. I am president of the Federal Law Enforcement Officers Association. I am not part of ICE or CBP, but I represent 24,000 Federal agents, 3,300 of which are FLEOA members from ICE. I have repeatedly heard the issues at hand for the past 2 years from membership. I have met with Secretary Chertoff. I have met with Assistant Secretary Garcia and Undersecretary Hutchinson as well, and we have talked about the problems.

Secretary Chertoff has told me that he feels that he can resolve the issues without a merger of ICE and CBP. Let me just go over some of the things that we have gotten from our members in terms of their complaints. And the complaints all center around a disconnect between ICE and CBP. And if at the headquarters level there are agreements or MOUs or directives coming out, they are not coming down to the field.

There are current MOUs that were intended to dissolve some of the red tape that don't. There is a database called TECS which is primarily used by ICE, yet it is manned by CBP. ICE and CBP do not know who is putting what into that database. ICE makes entries. CBP doesn't, so a lot of times ICE cannot tell if CBP is investigating the same target that they are. The analogy has been made to the police patrol function and to the detective units, and that is kind of similar to what our people tell us all the time.

Prior to the formation of DHS, you had the uniform division, and you had the investigators. The uniform division at the border would have the initial leads, and the investigators in ICE now would follow up on it. There is a disconnect between having people in CBP get the information to ICE to be followed up on. The flow of information just does not seem to be there. We have been assured by the Secretary's office and very recently by Julie Myers that that is going to be corrected.

The same situation applies at the airports. ICE offices and CBP offices were initially under Customs. They were co-located, housed together, and they spoke to each other, and the uniform people would make referrals to the investigators. We see this as a problem at the airports, ICE and CBP in many cases don't even talk to each other.

One of the suggestions that we have to offer, and our people are kind of evenly divided as to whether a full blown merger would fix the problem; 90 percent of our agents that responded to our survey tell us they want some restructuring, restructuring needs to be done to fix the problems. There has got to be better coordination and communication between ICE and CBP. They have suggested a possible task force approach, one that Secretary Myers mentioned is the BEST task force; that is a good example of a start. Task

forces of ICE and CBP people and analysts in other agencies seem to show promise. I have seen other task forces. You mentioned HIDTA. You mentioned the JTTF. They all bring resources and people together, and they exchange information, and they talk. So that is one of the suggestions that we would make as a possible alternative to a full-blown merger of CBP and ICE, maybe some type of a better task force approach. And I know that DHS is looking at this right now.

You have my written testimony. The message I would like to give you from our members is simple and clear, they ask that you please do something to fix the problem.

On a positive note, I can tell you that I did speak to Julie Myers on a couple of occasions very recently. We are going to be meeting in the next couple of weeks. She feels very positive that she can help fix a lot of the issues, and she wants to work with us, and I think that is a very positive sign.

So I would like to thank you for allowing me to speak on behalf of the men and women of Federal Law Enforcement who are part of FLEOA. Thank you.

[The statement of Mr. Gordon follows:]

PREPARED STATEMENT OF ART GORDON

MAY 11, 2006

Chairman Rogers, Ranking Member Meek, and other members of the Subcommittee, I want to thank you for the opportunity to appear before you today, to testify about the need to resolve coordination and communication issues between two important DHS agencies; Immigration and Customs Enforcement, commonly referred to as ICE and Customs and Border Protection, commonly referred to as CBP.

My name is Art Gordon and I am currently the National President of the Federal Law Enforcement Officers Association (otherwise known as FLEOA). FLEOA is the largest non-partisan professional association, exclusively representing Federal law enforcement officers.

I am here today representing over 24,000 Federal agents from over 50 different agencies, including 3,300 special agents (criminal investigators) who work for Immigration and Customs Enforcement (ICE) within the Department of Homeland Security.

All FLEOA National Officers like me are full-time Federal law enforcement officers who conduct FLEOA business on their own time. I am currently a full-time Federal agent serving as an Assistant Federal Security Director for Law Enforcement for the Transportation Security Administration (TSA). I previously spent 29 years as a special agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) before joining TSA in 2004. I am here today on annual leave, representing the members of FLEOA.

In March of 2003, portions of the abolished Immigration and Naturalization Service (INS) and the US Customs Service (USCS) were combined into two separate agencies within DHS: US Immigration and Customs Enforcement (ICE) and US Customs and Border Protection (CBP). These are now the two agencies with primary responsibility for immigration enforcement within the Department of Homeland Security.

It appears that the initial split of border and immigration responsibilities between ICE and CBP during the formation of the Department of Homeland Security was done without any compelling reason, and it was determined that CBP would handle "border enforcement" and ICE would handle "interior enforcement".

Over the past two years, we have received many complaints from our members regarding the lack of communication and coordination between ICE and CBP.

I have personally met with DHS Secretary Michael Chertoff, former Under Secretary for Border and Transportation Security Asa Hutchinson and former Assistant Secretary Michael Garcia from Immigration and Customs Enforcement (ICE) on more than one occasion to voice our member's concerns on this serious issue.

Secretary Chertoff has been very receptive to FLEOA and he has assured us that he intends to resolve these problems. He has indicated to FLEOA that the problems can be resolved without merging ICE and CBP.

In order for me and the rest of the FLEOA National Executive Board to better understand the apparent disconnect between ICE and CBP, FLEOA polled our 3,300 ICE special agent members on this issue.

I would like to share the results of our membership survey with you today.

The following problems have been identified by our members:

1. The current Memorandums of Understanding (MOUs) that were intended to dissolve the red tape between ICE and CBP have only served to strengthen it. There are still complaints from ICE agents regarding accessing certain database information that is controlled by CBP. CBP currently controls the TECS (Treasury Enforcement Communications System) database which stores information on ICE case/investigative data. However, CBP does not enter information into this database on their investigative targets, so there is no way for ICE agents to tell if CBP has an open investigation on one of their suspects. This results in dual track investigations and duplication of effort, with little or no coordination.

2. By separating the police/patrol functions from the investigative component, which is the current case with CBP(police/patrol component) and ICE (investigative component) as separate agencies, it appears that DHS is slowly eroding the ability of ICE agents to build quality informant networks and follow-up on investigative leads developed at the border or points of entry.

The criminal investigators within ICE should be able to rely on timely referrals from the uniform component of CBP, but unfortunately there is a disconnect between the two agencies. It appears that CBP is currently attempting to become self-sufficient in the investigative arena, eliminating any need to work with ICE criminal investigators in the future.

3. The original division of Customs and Immigration Inspectors from their related investigative colleagues (Customs special agents and INS special agents) with the formation of ICE and CBP, may be responsible for building administrative walls, lack of cooperation and lack of information sharing between these two agencies.

4. The flow of information from CBP(police/patrol component) to ICE (investigative component) for investigative follow-up within DHS is very limited and in some cases non-existent.

5. ICE and CBP have law enforcement personnel assigned to all major international airports within the US, but in many cases, there is no coordination or communication between the two agencies, because of the separate chain of command, separate management structure and separate priorities, policies and procedures. However, there is significant overlap on the functions they perform.

Many of our members have employed the police officer/detective analogy to illustrate the need to get everyone under one roof. As all of you know, in a police department the uniform patrol officer makes the initial contact with the suspect or the crime and it is then followed up by the investigative component, the detective division. Currently with ICE and CBP as separate agencies, our members feel there is a major disconnect between the police/patrol component (CBP) and the investigative component (ICE).

It is important to integrate the talent of ICE and CBP law enforcement personnel into cohesive investigative teams, while maintaining the appropriate chain of command. Criminal investigators should report up the chain of command to senior criminal investigators. We would not advocate a merger that will result in ICE special agents (1811 criminal investigators) reporting to CBP senior officials who do not have any investigative experience.

Possible Alternative to Merger:

A Task Force concept comprised of ICE and CBP personnel in many instances could be an alternative to a total merger of ICE and CBP into one agency at this juncture. For example, a Smuggling Unit in ICE could be comprised of ICE special agents, CBP Inspectors, CBP Patrol Officers and intelligence analysts. However, we still run into the same issue of two separate chains of command, two separate reporting systems, two separate data bases and the question of will ICE or CBP run this task force group.

We believe that the task force concept could be employed by ICE and CBP for smuggling investigations, strategic investigations, fraud investigations and sex crime investigations. The same concept could also be applied at all international airports, where ICE and CBP could be co-located and function as a task force, as US

Customs previously did prior to the formation of the Department of Homeland Security.

It should be noted that on April 20, 2006, DHS announced the formation of a new Border Security Enforcement Task Force (BEST) in Laredo, TX and one in Arizona. Additional BEST Task Forces will be formed along the Southwest border. DHS also announced that ICE will form Document and Benefit Fraud Task Forces in 10 major US cities this year.

FLEOA believes that this is truly a step in the right direction by DHS, in resolving these communication and coordination issues.

Recommendations:

In the event that a merger of ICE and CBP were to take place, we recommend that this new entity be restructured as follows:

1. Services Division—Process immigrants who are attempting to enter the country through legal means. Make referrals to the Investigation Division as appropriate.
2. Patrol Division—Arrest and administratively process illegal aliens at the US borders and inland.
3. Investigation Division—Handle all criminal investigative matters. This component would include ICE special agents and CBP senior inspectors (formerly called INS senior inspectors), and intelligence analysts.
4. Detention and Removal Division—Handle all detention and removal of all illegal or criminal aliens. This would include the removal of criminal aliens from State or Federal prison systems.

At this juncture, FLEOA believes that a restructuring at a minimum within ICE and CBP is necessary, to fix the disconnect between the two agencies.

If it is determined that the only way to resolve these issues is to merge ICE and CBP, then FLEOA would support this merger.

The message from our members is simple and clear. Please fix these problems now!

While the debate on the ICE/CBP merger continues, I call upon DHS Secretary Michael Chertoff, Assistant Secretary Julie Myers (ICE) and Commissioner Nominee Ralph Basham (CBP) to deal with the issues that I have brought forward to this committee today.

My goal as FLEOA National President is to work with the Administration and members of Congress to improve Federal law enforcement. That is why I am here today.

Thank you for allowing me to speak on behalf of the men and women of Federal law enforcement, who put their lives on the line every day to keep our nation safe.

Mr. ROGERS. I thank you, Mr. Gordon.

And the chair now recognizes Mr. Seth Stodder, senior counsel of the law firm of Akin Gump Strauss Hauer & Feld, LLP.

Thank you for being with us, and we look forward to your statement.

STATEMENT OF SETH STODDER, ESQUIRE

Mr. STODDER. Thank you, Mr. Chairman, and Ranking Member Meek, and the other distinguished members of the subcommittee.

Thank you for inviting me to testify here today on the important topic of whether the two sister agencies of DHS focused on securing our border and enforcing our Immigration Customs laws, CBP and ICE, should be consolidated into a single border Immigration and Customs enforcement agency within DHS.

I am currently a lawyer at Akin Gump, but before that, I served at DHS as the director of policy and planning at CBP. Since leaving government, I have remained active in the homeland security policy arena in various forms. And the most relevant to this hearing I served on the CSIS Heritage Foundation Task Force that drafted the DHS 2.0 report, which recommended significant reorganizations of DHS.

In the Second Stage Review, Secretary Chertoff accepted many of the organizational recommendations of the DHS 2.0 report, but

one DHS 2.0 recommendation not adopted by the secretary was our proposal that CBP and ICE be merged into a single agency devoted to securing our borders and to enforcing our Immigration and Customs laws. I continue to stand by the recommendation that we made in the DHS 2.0 report.

In my view, the original decision to dismantle Customs and INS and then reconstitute them into CBP and ICE was a mistake. For many years, experts have recognized that the fragmentation of border security responsibility between INS and Customs was a bad idea, and that it had led to waste, duplication, lack of coordination on policy, strategy and operations, stovepiping of information, turf warfare, overall dysfunction, and other parades of horrors.

The creation of DHS was supposed to fix this problem and consolidate border responsibility and accountability; instead, though, we took the harder path of breaking up two existing and competing agencies with overlapping responsibilities and then creating two new ones with different overlapping and competing responsibilities. We now have yet again two border agencies, and on top of that, we have also now split responsibility for Immigration and Customs Enforcement, which wasn't the case before.

On the up side, at least these two agencies are in one Cabinet department, DHS, unlike INS and Customs were, and we have to give DHS credit; it has worked extremely hard to make due with a difficult hand. DHS has been making significant strides in better securing our border and enforcing our Immigration and Customs laws, and it is muddling through and coordinating or babysitting the two competing border agencies in Immigration and Customs enforcement agencies, but it didn't have to be this hard. And speaking from experience, it was hard.

In fixing the previous horizontal Customs-versus-Immigration split, we created a new vertical fragmentation, separating the patrol and interdiction functions of border, Immigration and Customs enforcement from the investigation and alien processing functions. So in other words, we decided to simultaneously conduct a divorce by breaking up Customs and INS as well as conduct a merger by re-combining these pieces of the former agencies into CBP and ICE and then integrating them into cohesive wholes.

And this divorce took countless hours of management time of DHS, CBP and ICE. And over years of acrimonious what I would say divorce negotiations for which agency gets what, splitting up budgets, wrenching change, and then on top of that, we also merged and created One Face At the Border and merged investigations within ICE. And to what end no one is quite sure. It is telling that last year's DHS IG report on whether CBP and ICE should be merged noted that the rationale of splitting of the agencies was difficult to discern. And the problems with the split are pretty well documented, don't require large-scale rehashing here. I submitted my written testimony, and that can be, hopefully, put into the record.

But the issue that is presented before this committee right now is not so much rehashing the mistake of 2003—and I think, as Acting Commissioner Spero reflected, if this were 2003, it would be an easy call, the agencies should be merged. I think, in 2006, it is a

harder call, but I still maintain the recommendation that we should be merging the agencies.

And it is interesting, DHS has really not defended the decision to split the agencies on merits; it is really focused now on the 2006 problem, which is, is it more difficult to put it back together? Are we going to be creating, as Deputy Assistant Secretary Jackson would say, organizational churn? And I would say, in the remaining time that I have here, the issue is, yes, there will be organizational churn if you have a merger of the agencies, but it will be far less than the organizational churn that you had in 2003 in the sense that the two biggest issues in 2003 were the divorce of Customs and INS which created enormous dysfunction and wasted lots of time. And then the second difficult issue of 2003 was the merger, creating One Face At the Border within CBP, merging the Office of Investigations within ICE. Those tasks are done, and so the organizational churn that would be involved in remerging the agencies would be far less complicated. It wouldn't be uncomplicated. There would certainly be some complication, but it would be far less complicated than it was in 2003. And I think the upside benefits of merging the agencies, in terms of solving some of the organizational and policy and operational confusion problems and dysfunctions, would be worth the effort because ultimately DHS has better things to think about ultimately than babysitting its overlapping border, Immigration enforcement agencies. An agency head should be dealing with these issues, like the head of the Coast Guard does and other agencies; DHS should not be doing that.

With that, any questions you might have, I would be happy to address any questions. Thank you.

[The statement of Mr. Stodder follows:]

PREPARED STATEMENT OF SETH STODDER

MAY 11, 2006

Chairman Rogers, Ranking Member Meek, and Members of the Subcommittee:

Thank you for inviting me to testify here today on the important topic of whether the two sister agencies of the Department of Homeland Security (DHS) focused on securing our borders and enforcing our immigration and customs laws—U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE)—should be consolidated into a single border, immigration, and customs enforcement agency within DHS.

I am currently a lawyer in private practice at Akin Gump Strauss Hauer & Feld LLP in Los Angeles, but prior to that, I served in the Department of Homeland Security as the Director of Policy and Planning at U.S. Customs and Border Protection, as well as Counselor/Senior Policy Advisor to then Commissioner Robert C. Bonner. I served in a similar position with Commissioner Bonner at the U.S. Customs Service, prior to the creation of DHS and CBP. Since leaving government, I have remained active in the homeland security policy arena through work with the Center for Strategic and International Studies (CSIS), the George Washington University Homeland Security Policy Institute (HSPi), and other activity. Of most relevance to this hearing, I served on the CSIS-Heritage Foundation Task Force that drafted the "DHS 2.0" report, recommending a significant reorganization of DHS. In his Second Stage Review (2SR), Secretary Chertoff accepted many of the organizational recommendations of the "DHS 2.0" report. One "DHS 2.0" recommendation *not* adopted by Secretary, however, was our recommendation that CBP and ICE merged into a single agency devoted to securing our borders, and enforcing our immigration and customs laws.

I continue to stand by the recommendation made by the "DHS 2.0" report. In my view, the split of CBP and ICE was a mistake that, in the supposed interests of breaking down the stovepipes and duplications that made the relationship between the two pre-DHS border agencies—INS and Customs—so dysfunctional, created new

ones that did not exist before and never needed to exist. We now have—yet again—two border agencies, and have—yet again—stovepiped and fragmented the inter-related pieces of border, immigration, and customs enforcement into two competing and turf protective agencies. While DHS, CBP, and ICE have certainly made significant progress in better securing our borders and enforcing our immigration and customs laws, I believe the current organizational structure interferes with DHS from accomplishing all that it could in this area.

How did we get here? Honestly, I have no idea. Literally since the Hoover Administration, experts had produced numerous reports arguing that the separation of the twin border functions of immigration and customs into two separate agencies—INS and Customs—in two separate cabinet departments—Justice and Treasury—had led to needless dysfunction, duplication, and turf warfare. The examples of this are well worn, but a few are worth repeating—the separate and duplicate management structures for the immigration and customs inspectors working side-by-side at our ports of entry, the stories of Border Patrol Agents and Customs Special Agents drawing guns on each other on conflicting and uncoordinated enforcement operations, the separate INS and Customs air forces both performing border enforcement functions but not coordinating, among other choice tales. Over the years, the government had missed various opportunities to fix this problem, coming closest in 1973, when the merger of customs and immigration was proposed and some Customs Special Agents were split off as part of the creation of the Drug Enforcement Administration (DEA).

With the creation of DHS and the public momentum behind strengthening our border security post 9/11, the golden opportunity finally arose to make this “good government” reform and consolidate our border security, immigration, and customs enforcement agencies. At the same time, the creation of DHS presented the opportunity to make good on a Presidential promise to split the services functions of the old INS away from the enforcement side, to create a separate agency devoted to citizenship and immigration services.

Unfortunately, in making this “good government” reform, we bobbled the ball. Instead of doing the simple thing and simply consolidating the U.S. Customs Service with the enforcement side of the INS, we embraced complexity and made our lives more difficult. Violating the so-called “KISS” principle, we decided to consolidate border, immigration, and customs issues by *fragmenting* responsibility and accountability for them into not two but now *three* agencies—CBP, ICE, and CIS.

Fixing the previous “horizontal” customs versus immigration split, we created a new “vertical” fragmentation—separating the patrol and interdiction functions of border, immigration, and customs enforcement from the investigation and alien processing functions. So, in other words, we decided to simultaneously conduct a “divorce” by breaking up Customs and INS, as well as conduct a merger by recombining the shards of these former agencies into CBP and ICE, and integrating legacy customs, immigration, and agriculture enforcement operations into not one but *two* agencies.

For good measure, we also complicated the border intelligence functions, international operations, mission support, and integrity functions—splitting them haphazardly and painfully between CBP and ICE. (Indeed, for a time, even the air and marine interdiction operations were split between CBP and ICE, with the legacy Border Patrol assets going to CBP and the legacy Customs assets going to ICE, with little operational coordination—even though both had overlapping border interdiction missions. Thankfully, after more than a year of considering this elementary problem, DHS consolidated these functions and assets into one of the border agencies, CBP.)

This “divorce” process of splitting up Customs and INS and recombining them into CBP and ICE took countless hours of DHS, CBP, and ICE management time, over a year of acrimonious “divorce” negotiations over which agency gets what, complicated processes of splitting up budgets, wrenching change as legacy Customs Special Agents were forced to adopt legacy INS systems and vice versa, and the creation of duplicate mission support bureaucracies. In short, the splitting of INS and Customs and their recombination into CBP, ICE, and CIS created no end of management headache, and greatly complicated the first years of DHS—including the process of merging legacy immigration, customs, and agriculture enforcement functions into cohesive operational units within what became CBP and ICE.

And to what end? Still, no one is quite sure. It is telling that last year’s DHS Inspector General report on whether CBP and ICE should be merged noted that the rationale for splitting the border agencies in the first place was “difficult to discern.” Indeed, just as it would be “difficult to discern” a rationale for splitting the New York Police Department into a “Patrol Bureau” and a “Detectives Bureau” with overlapping and inextricably interdependent responsibilities for the same crimes but

different management structures and chains of command, it is also “difficult to discern why we would split overlapping and inextricably interrelated border, immigration, and customs enforcement responsibilities into a “Border, Immigration, and Customs Interdiction, Patrol, and Enforcement Bureau” and a “Border, Immigration, and Customs Investigations, Detention and Removal, and Student Visa Processing Enforcement, Among Other Things, Bureau.”

The *problems* with such a split of overlapping border, immigration, and customs enforcement responsibilities are well documented and don’t require large-scale rehashing here. The “divorce year” problems of 2003–2004, discussed previously, are “water over the dam”—those countless hours of DHS management time (and accompanying distractions from work on the substantive homeland security mission) figuring out how to split up Customs and INS (including their assets, budgets, missions, legal jurisdictions, and personnel) and recombine them into CBP, ICE, and CIS cannot be retrieved. But the operational and practical problems continue. In summary form (again, avoiding rehashing well-trod ground), they include:

1. The fragmentation of inextricably interrelated border, immigration, and customs interdiction and patrol functions from border, immigration, and customs investigations.¹ Just as NYPD detectives depend on leads from NYPD patrol cops, many (if not most) border, immigration, and customs enforcement investigations start with an interdiction, an arrest by a Border Patrol Agent or Inspector, or some other similar lead from the frontline. And, conversely, effective interdiction efforts depend on the intelligence and targeting information drawn from those investigations. This is the “feedback loop” that, over the decades, has been such a critical feature of effective border, immigration, and customs enforcement. This is true, even with regard to so-called “interior” immigration enforcement—given that all illegal migrants had a path here that led through a border or port of entry and many got here with the help of an alien smuggling organization that delivered them across the border. Given this, why would one put these inextricably interrelated functions into two different agencies, with different operational, budgetary, enforcement, and policy priorities, and with only a thin layer of Department-level (*i.e.*, not field level) coordination? Last year’s Inspector General report documents the predictable result of this split, with numerous anecdotes of missed hand-offs, turf warfare, and a general lack of coordination in the field and at headquarters.

2. The split of border and immigration apprehensions from alien detention and removal functions. By most estimates, approximately 90% of the aliens detained and removed by the legacy INS Office of Detention and Removal Operations are apprehended by the Border Patrol and frontline inspectors at the Ports of Entry. Given this, why would one put the apprehensions side of border/immigration enforcement in one agency with one set of policy, budgetary, and enforcement priorities, while putting the detention/removal side of border/immigration enforcement in *another* one with different such priorities, again with only a thin layer of Department-level (*i.e.*, not field level) coordination? Last year’s Inspector General report documents the predictable result of this split, in terms of mismatches of resources and priorities—the quintessential example being the OTM release issue.

3. The division of intelligence functions. It goes without saying that both border/immigration/customs investigators and border/immigration/customs patrol and inspections officers need intelligence concerning potential border, immigration, and customs violations. And, given the “feedback loop” discussed previously, it would be ideal for that intelligence resource to be *common* to both the patrol/inspections side and the investigations side of border/immigration/customs enforcement. Given this, why would one break the intelligence function into two pieces and put the fragments into two separate agencies?

4. The division of international operations. By definition, border, immigration, and customs enforcement has an international dimension. On the interdiction side, this is demonstrated by the Container Security Initiative (CSI), pre-clearance operations in Canada, the CBP deployments at Schipol Airport in Amsterdam, and Border Patrol efforts with Mexico, among other things. On the investigations side, all border smuggling investigations by definition have an international component. In the legacy Customs Service, the foreign “attaché” corps served both the interdiction and investigations sides of the house—coordinating foreign smuggling investigations *and* negotiating the CSI agreements with foreign governments. With the split of CBP and ICE, however, the legacy Customs attaches (all of whom were Special Agent Investigators by background) were transferred to ICE, leaving the CBP operators overseas—including the CSI teams operating in 42 ports around the

world—without effective representation at the U.S. Embassies. CBP is now having to rebuild its attaché corps, now with attaches in Mexico City and Ottawa.

5. *The split effectively destroyed the legacy Customs Internal Affairs Office.* One unintended by-product of the split was the destruction of the legacy Customs Office of Internal Affairs—which, when it was re-tooled in the late 1990s, dramatically reduced the serious corruption problems that had plagued Customs. This successful program was split along with CBP and ICE, and fundamentally was destroyed—for little reason.

These are just an assortment of the areas in which the dismantling of INS and Customs and their re-combination into CBP and ICE caused predictable problems, waste, and dysfunction. Adding these points to the hours of DHS, CBP, and ICE management time wasted managing the “divorce” of the agencies in 2003–2004—rather than focusing on substantive homeland security issues—places a heavy burden of proof upon those who contend the split was in fact a good idea. Given that even the Inspector General found the rationale for the split and all of its disruptions to be “difficult to discern,” it is hard to see how split proponents can justify why they made such a disruptive and destructive decision.

Concluding that the original split of INS and Customs and their reconstitution into CBP and ICE was a mistake does not answer the question posed by this Committee, however. The reality is that the split has happened, and CBP and ICE currently exist. The question now becomes whether it is worth the effort to undo the organizational mistake made a few years ago.

The Department of Homeland Security has clearly concluded that it is not. Tellingly, DHS does not defend the original decision to split Customs and INS and re-combine them into CBP and ICE. Deputy Secretary Jackson’s letter responding to the Inspector General’s report of last year does not defend the original decision. Nor did Assistant Secretary Baker’s testimony of last year. Rather, the apparent DHS rationale for not merging CBP and ICE appears to be that it is too late to unbreak the eggs and that the omelet has already been made. In Deputy Secretary Jackson’s words, a merger of CBP and ICE would “yield a protracted period of organizational churn, thus undermining operational effectiveness at CBP, ICE, and the Department at large.”

I can certainly sympathize with Deputy Secretary Jackson’s comment. I lived through the first period of “organizational churn” when DHS made the decision to break up Customs and INS and re-combine them into CBP and ICE.

And it may indeed be true that the benefits associated with creating a single border, immigration, and enforcement agency might not be worth the “organizational churn” associated with combining two currently existing agencies, CBP and ICE. In some sense, DHS might simply have “bigger fish to fry,” as it works on strengthening FEMA, addresses port security issues, and endeavors to strengthen border and immigration enforcement through the Secure Border Initiative, among other things. It may be that the window for organizational tinkering has closed—even to correct obvious mistakes, such as the CBP-ICE split—and it is time to focus on the substance of homeland security and strengthening obvious organizational basket-cases like FEMA. In the meantime, DHS can muddle through with the dysfunctions of having CBP and ICE be separate agencies through coordination mechanisms and a stronger policy apparatus. And we must give significant credit to Secretary Chertoff, Deputy Secretary Jackson, and to the leaders of ICE and CBP for all the great strides they have made.

Maybe at this point it is better to leave well enough alone, and let DHS do its substantive work without the distractions involved with further organizational change.

I don’t think so, however. In fact, I think now is exactly the time to correct the mistake, merge CBP and ICE, and fulfill the longstanding goal of establishing a single border, immigration, and customs enforcement agency. The reality is that the longer we wait to correct this mistake, the more entrenched the CBP and ICE bureaucracies will become, and the more painful it will be to create a single agency. As we discussed in the “DHS 2.0” report, this is the lesson of the Department of Defense. DoD muddled through and bowed to service parochialism for almost 40 years from 1947 to Goldwater-Nichols in 1986, when it finally reorganized the armed forces to make our military more effective.

The lesson of DoD is clear. Fix organizational problems at the beginning, or conceivably be doomed to live with them for decades—as with each year, the change becomes harder and harder to accomplish and the transaction costs rise. The reality is that DHS is still young, and the cement within the Department is not yet dry. The War on Terror will be with us for decades, and DHS will be with us for far longer. DHS needs to be organized for the long term, and not simply in order to

avoid the costs associated with correcting dysfunctional organizational structures—especially if those dysfunctions were self-inflicted.

Moreover, the “organizational churn” associated with merging CBP and ICE—while not insignificant, surely—would not nearly rise to the level of “organizational churn” that accompanied the original decision in 2003 to shatter Customs and INS and re-constitute them as CBP and ICE. Indeed, much of the “organizational churn” in 2003 and 2004 had to do with the “divorce” proceedings associated with the dismantling of INS and Customs—the “who gets what,” and how to split up and re-constitute mission support bureaucracies. A CBP–ICE merger would not have any of those complications or traumas. Indeed, a CBP–ICE merger would simply add additional direct reports to the head of the consolidated border/immigration/customs enforcement agency—as all the interrelated operational elements of border, immigration, enforcement elements (*i.e.*, investigations, intelligence, patrol, inspections, detention/removal, air/marine operations, and international affairs) would all be under one roof and under one operational chain of command. This “churn” would be far more manageable than the miserable “churn” that associated the initial mistaken decision to dismantle existing agencies.

Furthermore, much of the pain associated with the “merger” piece of creating CBP and ICE—as opposed to the “divorce” associated with dismantling Customs and INS—primarily arose out of the need to integrate legacy customs, immigration, and agriculture functions into single operational chains of command. This has now been done. CBP has created “Once Face at the Border,” as legacy immigration, customs, and agriculture inspectors have all be integrated into a single CBP inspectional force. ICE has integrated legacy customs and immigration Special Agents into a single Office of Investigations. Many other integrations have been accomplished by the ICE and CBP leadership. In merging CBP and ICE, this integration of legacy functions would not need to be done again. Instead, the integrated Office of Investigations would simply co-exist with the integrated Office of Field Operations in a unified border, immigration, and customs enforcement agency, under a single chain of command to the agency head.

In addition, bringing CBP and ICE together under one agency head would simplify the Departmental task—as DHS leaders would no longer need to waste their time “coordinating” the obviously interrelated operational functions of border, immigration, and customs enforcement. An operational agency head would do this, assisted by a firm chain of command down to the field, and that operational agency head would be held accountable for failure by the President and the Secretary. DHS would no longer need to mediate disputes between CBP and ICE on mission support or budget issues. An agency head would deal with these issues for the unitary border, immigration, and customs enforcement agency—and the President and the Secretary would hold him or her accountable for failure. The DHS leadership has far better things to do than baby-sit the two often warring border, immigration, and customs enforcement agencies.

In short, the merger of CBP and ICE would bring significant benefits, and achieve a long-sought reform—creating a single border, immigration, and customs enforcement agency. And the costs in “organizational churn” identified by DHS are greatly overstated and, in any event, will be inevitable whenever CBP and ICE are ultimately merged. In short, this is a good government reform and there is no time like the present.

Thank you again, Mr. Chairman, Ranking Member Meek, and members of the Subcommittee for holding this hearing and inviting me to participate. I look forward to answering any questions you might have.

Mr. ROGERS. And I thank you.

I would like to start with you on my questions. You heard—I think you were present for the first panel, weren’t you?

Mr. STODDER. Yes.

Mr. ROGERS. When you heard Ms. Meyers and Ms. Spero talk about the fact that they seem to have worked through their difficulties, and while they are still encountering some organizational struggles, they felt—my impression is they felt like they have gotten through the rest of it, and that it would be far more damaging for them to try to go through this organizational churn—a phrase that Secretary Jackson has used. Why do you disagree with their logic? I tried to follow you and your statement, and I really don’t. Why is that logic flawed?

Mr. STODDER. Well, I think there are two issues there. I think the issue of, are things getting better between CBP and ICE? And I think the answer to that is probably, A, it is too soon to tell in terms of the coordination mechanisms that have been put in place over the last year at the DHS level, and then somewhat at the field level. And maybe it is too soon to tell, but I guess my sense of that is, it is always going to be a second best solution to have DHS at the departmental level from Washington trying to coordinate two agencies that have overlapping jurisdictions, have significant interrelationships, inextricable interrelationships between the patrol functions and the interdiction functions and the investigative functions, between the detention and removal functions and the patrol functions, et cetera, let alone the international issues which are even more complicated and still haven't really been resolved ultimately. I think it is far more preferable to have that be taken down a notch and further into the operational agency. And ultimately the better coordination mechanisms have to be done at the field, with a strong chain of command in the field. So that is on the positive side in terms of why I still think a merger is the best course.

On the issue of organizational churn, certainly that would be a cost, and that is something that—that issue is why I think, in 2006, it is a tougher call in terms of what the right course is at this point versus 2003. But I think, even so, I think the organizational churn is something that can be dealt with. It is not as bad as its organizational churn was in 2003 because are not going to have to divorce agencies, you are not going to have to merge competing cultures of Customs, Immigration and in CBP's case, agriculture into two particular chains of command. You can still have an office of investigation, et cetera, within a unified agency, but you would have a stronger structure to deal with the conflicts that could arise within that agency in the same way that you have an agency structure that could deal with conflicts that arise within the Coast Guard or within the old Customs Service or the old INS.

Mr. ROGERS. If the merger were to take place, in your view, at what point in time do you think we would see an easing of the churning activity and the organization smoothly running?

Mr. STODDER. Well, I think that would be dependent on what type of a merger you would see in terms of what—I mean, you could do things—I mean, one of the issues that you would see is that there are different field structures for the Office of Investigations, detention removal, Border Patrol and the Office of Field Operations, and the question is, would you want to merge those field structures completely and co-locate them? I think that would be more difficult certainly. But I think there would be ways of going about the merger that would not be as difficult.

And the other thing is that you would realize some synergy in the mission support area because certainly a lot of the fight in the 2003–2004 period was on how to split apart, to the extent that you wanted to split apart, some of the mission support areas in terms of who does what, personnel. And we tried to muddle our way through things like shared services and tri-border, tri-agency agreements with CIS and other things. But ultimately, if you had a single agency that actually had an agency head that could be

held accountable for failure in all those areas, I think you would have a more effective border, immigrations, Customs enforcement.

Mr. ROGERS. Thinking about that statement, you heard earlier Ms. Sp ero say that she felt like we had finally right-sized CBP and ICE as far as an organizational structure. So I take it, from what you just said, you disagree.

Mr. STODDER. I disagree with that. CBP is about 44,000 people right now, I think ICE is about 18 or 20,000. You would have a significant agency in the 60,000 range. But I think ultimately the issue is not size, the issue is function, and the issue is, how do you forge the interrelationships of border, Customs and Immigration enforcement together. And so the question of whether it is a 60,000 person or 65,000 person agency versus 18,000 or 42,000, that is not the issue. I think the issue is strong leadership, strong chains of command to forge interrelationships.

Mr. ROGERS. I thank you. My time has expired.

The Chair now recognizes the ranking member, Mr. Meek, for any questions me might have.

Mr. MEEK. Thank you very much, gentlemen, for being a part of the second panel. And I apologize for the long vote, but that is above our pay grade.

Well, this is quite interesting because I am hearing a number of things. I am hearing that it would be good if we could merge the department. I am hearing that maybe a merge is not the best thing. And I am hearing even mixed reviews from the men and women in the field that are not sure, but they want something to happen more than what is happening now.

I would assume if it came down to Border Protection and investigation and streamlining the whole process, that being under one roof versus several roofs would be more efficient and would work better.

Mr. Gordon, if you could talk a little bit about the airport experience and also maybe talk about the different areas where the men and women in uniform or out of uniform, those investigators, have said where they are having some real issues as it relates to the efficiency of the agency, because that is what this really is boiling down to. When I asked a question of Assistant Secretary Myers about how this coordinating council, how is it really working, is it—do we have any frontline input on what actually happens on the ground? And that answer was, well, we have the folks that are in position that can make the decisions to make sure that those issues are addressed. And I think that that is where the rubber meets the road in this whole debate. The department is trying to quench the Inspector General's report, quench the thirst of the Inspector General's report of those three areas—and I don't know I need to read them again—that they found were major issues that weakened our border security. So if you could give me some insight on some of the frontline folks, what they are saying, some of the—you identified some things that were a problem or still is a problem, identify what happens every day because we don't have this merger, and where we get confused in translation here.

Mr. GORDON. Basically, prior to the formation of DHS, you had Customs agents and inspectors at the airport. The inspectors were the uniform people, and when they came across a crime or some

information or something that needed to be investigated, it was referred to the Office of Investigations special agents.

What I am told now is you have CBP at the airports and you have ICE at the airports, and they are, in many cases, not co-located anymore. They have separate chains of command, separate priorities. They have separate structures. So, in many cases, they don't speak to each other, and that is a significant problem. Now we are being told, I was told earlier today, that is being addressed at the highest levels to force CBP to make all referrals to ICE, but there are MOUs out there—for instance, as I understand, there is a MOU that Border Protection has from DOJ days where it makes referrals to DEA. Well, Border Patrol is part of CBP. They are part of DHS. They should be making referrals to ICE, which is the investigative arm of DHS.

Mr. MEEK. Mr. Gordon, did you raise that with Secretary Chertoff when you—was that one of the issues you raised when you met with him?

Mr. GORDON. That was one of the issues I raised. In fact, a member of his staff was here today and told me that he is coming out in writing as we speak to resolve that issue from the headquarters level. The issue becomes—I don't know that it is going to get down to the field, and that is what they have to do, is get this down to the field level. The agent, the uniform people and the investigators have to start working together. They have to start talking. They have to start communicating, and that is our main concern.

Mr. MEEK. Well, do you have a copy of any correspondence that you sent to the Secretary outlining these concerns?

Mr. GORDON. Not with me, but I do, I can send them.

Mr. MEEK. Our record will be open. And if we could, Mr. Chairman, have unanimous consent to enter that letter into the record.

And Mr. Bonner, I just want to—you mentioned something about it may not be good to merge these two agencies, but maybe there could be some tweaking to be able to make—to reach our objective of border security and communications at the same time.

Mr. BONNER. Actually, what I was suggesting is you blow up the two existing agencies, ICE and CBP, and you revert back to the original intent of the Homeland Security Act, that you create a separate agency that is in charge of Customs, a separate one for Immigration Enforcement, a separate one for agriculture. All three of these areas are extremely complex, and it is impractical and unrealistic to think that a single employee can become expert in all of those areas. Plus your leadership is going to—it is only natural that one of those functions is going to emerge at the top, and in this case, it was the Customs Service because INS was so mismanaged, it was natural that the larger Customs agency, which was much better funded and much more highly regarded, would emerge as the victor in this power struggle, and they did. And the emphasis is primarily on Customs matters, which is not the sole focus of these two agencies. The focus needs to be on Immigration, Customs and agriculture.

And so what I am suggesting is a reorganization, not a merger of the two existing ones, but rather a reorganization so that we have more clear lines of authority based upon the statutes that these employees are enforcing.

Mr. MEEK. So are you advocating three agencies?

Mr. BONNER. Yes, I am, which was the intent of the Homeland Security Act. I went back and read it, and I was kind of surprised that Congress—I am not surprised that Congress got it right; don't misinterpret me. I was surprised that that was the structure that was called for because all of the debate had been swirling around, well, is it ICE, is it CBP, should we merge them? And then when I went back and looked at the statute, it was very clear that it was laid out in that manner. And it was an afterthought that they came up with ICE and CBP. And it made no sense at that time to divide it along geographic lines as if there is somehow a distinction between border enforcement and interior enforcement; there is clearly not. And the coordination and cooperation has suffered greatly as a result of this structure that we have now. And what we have seen is an evolution. Border Protection is now developing its own anti-smuggling capabilities, they are not calling them criminal investigators, but they are handling more and more of these cases through disrupt units and units that they call other things because the system isn't working. When you have two separate agencies and you have to jump through all these bureaucratic hoops, it makes it impossible to get things done, so people figure out a way to work around the system.

Mr. MEEK. Mr. Chairman, I just want to ask your indulgence for a few more questions here.

You mentioned something also that it may not—DHS, the Department of Homeland Security, has this ability to restructure or make it one agency or make it three agencies. They have the statutory authority to do that now without us doing anything?

Mr. BONNER. It is my understanding that the President retains the authority to offer another reorganization plan to the Congress of the United States, and I believe that it lays on the desk of Congress for 60 days before it would become effective, but, yes, I believe he still retains that authority under the Homeland Security Act.

Mr. MEEK. Okay. If I can, Mr. Stodder, I just want to—you mentioned something I thought that was very unique, and then I am going to yield to the chairman.

You mentioned that it won't be as painful—

Mr. STODDER. Right.

Mr. MEEK. To merge these agencies together so that they can communicate.

Mr. STODDER. Right.

Mr. MEEK. You wrote, and it was a part of the 2.0 report that—actually, this is your second time before this committee. Hopefully you won't have a third and fourth experience. We won't continue to talk through this, because as the Nation debates this issue of border security, A, we have to have the right personnel in the field playing in the right positions to be able to be successful, and I know I am using this metaphor, but I hear a lot of meetings and organizing, and we are talking to John and John is talking to us, and then we have to meet again about what John said; I mean, a lot of that is going on. Meanwhile, back at the ranch, are we investigating these cases and prosecuting these cases in the way that they should be prosecuted? And are we protecting our borders,

what we should have been doing from the beginning versus the inside baseball? I hear the reluctance from the first panel. We don't need to do that. As a matter of fact, one of the gentlemen—I cannot remember his name right now, it escapes me—but he says, his words were that we needed to stay the course regardless of the fact that we have these problems and these issues have been brought about—Mr. Baker said we need to stay the course. I want you to talk a little bit about staying the course on what we have right now and the way you see this thing coming to a head eventually as it relates to prosecutions, as it relates to the efficiency of the Department, and then I will yield back to the chairman. There is only two of us here today.

Mr. STODDER. Okay. What Assistant Secretary Baker said or has said about staying the course, I mean, that is a compelling argument in the sense of, at some point, to continue with the sports analogy here, at some point, it may be wise to blow the whistle and say, stop any further organizational tinkering and move on with substance and get the job done. My view on that is, we are not there yet. I mean, we have to be thinking about the Department of Homeland Security for the long haul. The war on terror is going to go on for a long, long time, and even after al Qaeda is completely destroyed, we will have a need for a Department of Homeland Security.

And I think that—so in that sense, I mean, we are 3 years into the Department, it is still young, it is still—the cement is not yet dry. And I think that part of the reason why CBP and ICE are muddling through, and I think are still effective to some degree—I mean, they are still effective because of the personal relationships that are still out there in the field among people who served in the Customs Service or served in INS together, some of the field—some of the directors for field operations for CBP on the inspection side or some of the SACs on the Office of Investigations or some of the Border Patrol, they know each other from the days within their legacy agencies, and so I think that some of the things are still moving because of that. But I think, as time goes on, those people will retire, and I think that the CBP and ICE bureaucracies will become more entrenched, and I think it will be more difficult to merge the agencies.

So my sense is, while I sympathize with Stewart Baker's views on staying the course, because of the concern about organizational churn, as Deputy Secretary Jackson has so eloquently said, I do think that if you are going to merge the agencies and you are going to create a single agency to enforce Border Security, Immigration and Customs, all of those interrelated functions, now is the time to do it. I don't know if that answers your question, Ranking Member Meek.

Mr. MEEK. It does. I know what you are saying, that is it is important that we stay the course in the overall global issue of dealing with this, but now is the best time since we have an open book on how we protect our border, that is what I hear you saying.

Mr. STODDER. Right. I mean, I think it is important to stay the course. It is a factor to consider. But I think the countervailing factors of making our border, Immigration, Customs Enforcement more effective and more efficient ultimately, I think are counter-

vailing factors right now. And I think if you ask me 10 years from now, maybe not, but right now, the cement is sufficiently still wet that we could actually do a merger and limit the amount of organizational churn that would hinder our effectiveness during that merger period.

Mr. MEEK. I thank you. I yield back.

Mr. ROGERS. I thank the gentleman.

I would like to ask you, Mr. Gordon, you stated in your opening statement that you believe that a merger is not the answer. And you talked about the flow of information, and you felt like some of the things that are taking place now, and it could be done short of merger, would remedy the flow of information problems that currently exist. Is that an accurate characterization of your view?

Mr. GORDON. My view is that our people in our survey, the Federal agents out there are kind of evenly divided on whether the merger is the appropriate answer. I think they are afraid of the organizational churn, the turmoil again of going through what happened 3 years ago when the agencies were torn apart and then put back together. So I think it is kind of a fear of the unknown.

Mr. ROGERS. So is it accurate to say, then, that your position today then is not that you are advocating merger?

Mr. GORDON. I would say that is accurate at this time, yes, sir.

Mr. ROGERS. You made reference to the task forces that have been developed as useful. And you think the BEST task force, which was made reference to in our earlier panel, I think you cited it in your opening statement; do you believe those are going to be an effective means of remedying some of the communication shortfalls?

Mr. GORDON. Yes, I do, because my experience with task forces is they have proven to be a very effective means of coordination of communication.

Mr. ROGERS. Mr. Bonner, I want to make sure I understand. My understanding of your statement is you also are not here as an advocate of merger. In fact, in your written testimony, your quote was, "simply merging the bureaus of CBP and ICE would not fix the problems resulting from their creation." And you went on to say, "In fact, it is likely that such a move would exacerbate some of the existing problems." So I think that is a pretty fair assessment to say that you are not a fan of merger.

Mr. BONNER. I am not a fan of merger but a huge fan of reorganization to correct some of the problems.

And I would also like to go back to Assistant Secretary Baker's stay-the-course remark. That only works if you are on track. If you are heading towards a cliff, the wisest thing to do is throw the breaks on and turn around.

Mr. ROGERS. I want to visit your suggestion about creating three separate bureaus of Immigration, Customs and agriculture, and ask you how, in your view, would that eliminate some of the bureaucracy that we are suffering under and streamline activities organizationally?

Mr. BONNER. What we are dealing with here is a set of three very complex sets of laws. If you stack the laws and the regulations and all of the implementing policies and court decisions on top of each other, they would probably reach the ceiling in this room. And

so I am not advocating that we—that you are going to achieve a lot of streamlined efficiency, what I am saying is, you are going to be able to do the job more efficiently. And job one is protecting America from terrorist attacks, and job two for these agencies is doing their former functions, whether that function was ensuring that only people who have a right to come into the country come into the country or to keep counterfeit goods out of the country or to keep produce that that is tainted out of the country. So I don't think you can look at it from a standpoint of trying to achieve economies of scale by merging everything together. I mean, that would suggest that you just throw every government agency into one huge government agency.

Mr. ROGERS. So, in summary—I want to get back to the threshold question for this third—and I am convinced it is going to be our final meeting on this issue—the threshold question is whether or not we should merge CBP and ICE. The first three panelists said, no. Two of the three of you are saying merger is not the answer. Is, basically, that an accurate assessment of what has happened here today?

With that, I will be quiet and yield to the ranking member if he has any final questions before we adjourn this panel.

Mr. MEEK. Well, I just mainly—I don't have a question, I just have mainly a comment, Mr. Chairman.

I think it is important, gentlemen—obviously, there are two or three members that are very passionate about this issue. It is frustrating when we feel that we are doing the right thing and then we hear that we are not doing the right thing as it relates to policy. I don't read a lot coming out of Heritage Foundation, but I think this makes some sense to be honest with you, I am going to be brutally honest with you. I think it does make sense.

I used to be a law enforcement officer, and I know what it means when—what the chain of command means and the things that go on at the top with the brass. When you start talking about merger and you start talking about combining agencies, and then folks go into the mode where they are saying, wait a minute, hold it, I have a retirement boat in my future somewhere, and a merger doesn't necessarily—I don't know where I am going to fall in that organizational chart. The only thing different in this case from the average merger is the fact that it is dealing with border security, and it is dealing with the issue that is at the forefront of all Americans' minds of protecting us from individuals that will harm us, stopping drug dealers from getting drugs into our country, all of these things, so this is very, very important.

I just want to make sure for those folks that are out there working shift work within both of the agencies, that they have what they need. President Bonner, you know that the stovepipes that we talk about, as relates to agriculture and enforcement and investigation and a couple of other stovepipes that are out there, to be able to allow hopefully individuals to be able to carry out their functions better is something that, through the mandatory process, that I have embraced some of that, and I have embraced a lot of what you are saying about right now. I believe right now is the time. And this will be an ongoing discussion, and I hope you will continue to work with the Chairman and members of this committee on this

very issue, but I think it is something that we are going to have to deal with more sooner than later. And just shelving it and saying that, well, we had the discussion, hopefully things will get better, that is the reason why, Mr. Gordon, I am very interested in seeing your letter to the Secretary to see, using concrete again, is the concrete wet or dry? Are folks really willing to be flexible for the sake of making sure that we have the best, efficient agency as possible?

I go through Miami International Airport every week, and I see Customs and Border Protection officers. I see ICE officers. I see detention and removal. I mean, I see these folks that are there. And they know I am a Congressman, and they stop me and say, I understand that you all are talking about this, and these are my issues. And I mean, I would like to help you further, but I do want to hopefully have an opportunity to move up in the organization without any repercussions. And I think that is what makes this job even more difficult.

Mr. Chairman, hopefully in the discussion that we have amongst members, I hope that we will be able to find some sort of way that we can continue to carry out what Mr. Gordon said; his members are split on this, but they want things to get better. That is one thing that they hold a common interest on. But what I am concerned about is a major, major foul up, when we see—we kind of felt that it needed a little help, and we needed to do something, and we didn't act when we should have acted, should have responded to it, to the issues, that we legislate in haste. And when we legislate in haste, that is a true train wreck because things will not come out the way we want to come out. I will say the Department of Homeland Security, great idea, but it was created in haste. If we had an opportunity to really oil it out and have the witness testimony and to be able to do the things that we need to do, maybe we will have a better functional department, and so now we are going through the process and ironing out these issues.

One of the biggest steps, Mr. Chairman, was the creation of this committee to be able to carry out the oversight functions and to have members that will spend the time to get educated on the issues versus coming in and out of the issue on other committees of jurisdiction and trying to be professionals in the area of management, integration and oversight.

So with that, Mr. Chairman, that is the end of my comments. And I look forward to working with all of you as we move forward.

Mr. ROGERS. I thank the ranking member. I want to thank all of you for your valuable time and your testimony. It is very helpful to us to hear from professionals like you about these important issues and decisions that need to be made.

Because of the late hour, I am intentionally not asking all the questions I have, so I will remind you all that the record will be open for 10 days. I know I have got a series of additional questions that will be submitted to you. I would ask that you respond to those in writing if you could for the record.

And with that, we stand adjourned. Thank you.

[Whereupon, at 5:45 p.m., the subcommittee was adjourned.]

A P P E N D I X

QUESTIONS FROM HON. MIKE ROGERS OF ALABAMA FOR ASSISTANT SECRETARY STEWART BAKER, ASSISTANT SECRETARY JULIE MYERS AND HON. DEBORAH SPERO
RESPONSES

MAY 11, 2006

1. Please provide an update on the Request for Proposals (RFP) for *SBI_{net}*.

Response: A critical component of the SBI strategy is the Department's plan to launch a program to transform its border control technology and infrastructure. This program, named *SBI_{net}*, will integrate multiple state of the art systems and traditional security infrastructure into a single comprehensive border security suite for the Department.

Since late January, the DHS team has been focused on the goal of awarding a single prime contract to develop and deploy *SBI_{net}* by September 2006. The *SBI_{net}* request for proposal was issued on April 11, 2006, and proposals were received on May 30, 2006.

As anticipated, we had a strong response to the RFP and the evaluation process will be a lengthy one. To maintain the September 2006 award schedule, an intra-agency team of 36 DHS staff members are working to complete thorough discussions and a comprehensive evaluation.

2. Congress requested that the Department submit its strategic plan for SBI by April 17, 2006 however; this plan has not yet been submitted. **When can we expect this plan to be submitted?**

Response: DHS continues its work to refine the SBI strategy. The strategy will include a multi-year plan that includes: a comprehensive mission statement; an explanation of how long-term goals will be achieved; schedule; an identification of annual performance goals and how they link to long-term goals; an identification of annual performance measures used to gauge effectiveness towards goal achievement by goal; and an identification of major capital assets critical to program success. The strategy will be submitted to Congress as part of the requirement for delivery for a SBI strategic plan in November 2006.

3. The Department describes SBI as a mix of technology, infrastructure, and personnel solutions to strengthen border security. Thus far, DHS has not estimated the number of Border Patrol personnel that will be required to secure the border. **Would you please discuss why the Department does not have an estimate for the number of personnel that will be required?**

Response: U.S. Customs and Border Protection, Office of Border Patrol (OBP) planners have indicated they need 18,000 to 20,000 Border Patrol agents to secure the border. However, this estimate may change based on the *SBI_{net}* Integrator's recommendations, assuming an optimum mix of personnel, technology and tactical infrastructure are made available. Border Patrol is currently in the process of hiring agents to meet the goal of 6,000 new agents by the end of the first quarter of fiscal year 2009.

4. **When does the Department plan to consider its future staffing and training requirements?**

Response: We have already begun by focusing on succession planning and workforce development. These strategies address three main areas: recruitment, retaining talent, and learning and development.

Recruitment

The Department is conducting workforce analyses that include strategies to close hiring and competency gaps in mission critical occupations across DHS. To assist in the recruitment effort, DHS has established a corporate branding initiative resulting in recruiting materials such as portfolios, slipsheets, a recruitment video,

and CDs that may be utilized throughout the Department at a variety of recruitment events. A Recruitment Taskforce has been established to leverage component-specific recruitment activities throughout the Department. Components are making use of recruitment flexibilities such as outreach, the student loan repayment program and hiring bonuses.

Retaining Talent

DHS is fostering a results-oriented workforce through the implementation of the new pay and performance management system that links individual/team/unit performance to organizational goals and results. The DHS Chief Human Capital Office links specific component results from the Federal Human Capital Survey to results gained from workforce analysis. Components are encouraged to actively develop internal strategies to track and improve retention for those segments of their workforce where losses are above the normal rate by making use of retention flexibilities such as retention bonuses, performance awards, telework and alternative work schedules. We will continue to develop approaches to retention based on exit interviews, grievance/complaint trend analysis, and/or focus groups.

Learning and Development

All Components must foster continuity of leadership and knowledge by applying the DHS Leadership Competency Framework and a succession planning approach to their workforce planning efforts. Learning and development opportunities must be continually funded through centralized (Departmental) and Component-sponsored activities. This ensures that the executives and those in the leadership pipeline strengthen their ability to direct and manage the work of others, evaluate and analyze results, and implement process improvement techniques. The Leadership Competency Framework provides the necessary standards to ensure learning is also aligned with organization goals. Components will use the results gained from the workforce planning process to identify appropriate attendees for programs such as the newly established DHS-wide Senior Executive Service (SES) Candidate Development Program, Component-specific Candidate Development Programs, the Department of Labor's SES Forum Series, The USDA Graduate School, and USDA's Executive Potential Program and Aspiring Leaders Program among others.

Components will continue to share resources through programs such as the tri-bureau (ICE, CIS, CBP) Supervisory Leadership Training Program; USCG's Mid-level Managers Course, Mentoring, and Executive Development Programs; and FEMA's Leadership Development Programs. It will be through these efforts that DHS' leadership cadre will better be able to effectively manage people, ensure continuity of leadership, and sustain a continuous learning environment.

5. In the new DHS Policy Office, there is an office of International Affairs that reports directly to you. However, CBP and ICE still maintain their own offices of International Affairs and we continue to hear about competition between the agencies for precious billets at overseas posts.

- **Has Policy considered the possibility of bringing the ICE and CBP Offices of International Affairs under your policy office? If not, why not?**

Response: ICE and CBP maintain their own Offices of International Affairs. However, the Component offices rely on OIA for international policy guidance.

- **How does the Policy office plan to ensure that CBP and ICE coordinate with you about overseas assignments and plans that do not compete for overseas posts?**

Response: In accordance with DHS Management Directive 3400, prior to the establishment of a DHS billet at a post abroad, the Office of International Affairs (OIA), within the Policy Directorate, reviews the position description and justification, and submits a recommendation to the Deputy Secretary for approval. It is OIA's responsibility to validate and manage the Department's overseas footprint in concert with the Department of State's rightsizing initiative, the NSDD-38 process and the DHS strategic plan to ensure all of our positions abroad are necessary.

6. One of the Committee's continuing concerns is about ICE's morale in the field. I understand that you have been meeting with agents in the field and that these meetings are being well received. **Can you please tell us in more detail about these meetings, including the feedback you have received?**

Response: Agency morale is one of the most critical issues related to agency success. Improving morale therefore has been one of my greatest priorities. Establishing clear goals and providing strong leadership are critical components of this effort. Upon my appointment as Assistant Secretary for Immigration and Customs Enforcement, I mailed a letter, sent a broadcast email and recorded a video message targeted to the agency's 15,000 employees setting forth my vision. I thought it was

very important to inform employees about where I wanted the agency to go, what expectations I had for them and how I intended to achieve success with their support.

I also believe it is essential to engage employees in the field. Since becoming Assistant Secretary, I have met with over 1,000 employees in various locations including Laredo, TX; Tucson, AZ; Chicago, IL; Tampa, FL; San Diego, CA; and New York City, NY. The feedback I have received indicates that the employees have appreciated the opportunity to communicate directly with me, to express their concerns and ideas as well as to receive added information about my vision for the agency. Following these visits, I recorded my "Notes from the Road" and issued them as regular broadcast emails to ensure that ICE employees across the agency recognize that I take their comments seriously and that I am committed to a strong line of communication with our field operations.

I want to assure employees that my primary goal is to support them and enable them to perform their responsibilities to the best of their abilities. Since joining ICE, I have taken many steps to ensure that we are addressing ongoing concerns raised by employees. I have issued additional broadcast emails that echo my priorities for the agency. Finally, I addressed ICE employees in May to talk about our accomplishments and to reconfirm my priorities going forward.

I am pleased to report that employees in the field are responding positively to the improving financial picture for the agency as well as the greater clarity offered in terms of our priorities. We have a lot of work to do, but based on the feedback we have received to date, agents realize that we are making great progress.

7. How does ICE's enforcement of immigration laws in the interior relate to the Secure Border Initiative?

Response: On November 2, 2005, the Department of Homeland Security (DHS) announced the Secure Border Initiative (SBI). The border is not merely a physical frontier and, effectively securing it requires attention to processes that begin far outside U.S. borders, occur at the border, and continue to all regions of the United States. SBI brings a systems approach to meet this challenge; its mission is to integrate and unify the systems, programs and policies needed to secure the border and efficiently enforce our customs and immigration laws.

A major component of SBI is ICE's work on immigration enforcement inside the United States. The primary objective of the ICE Interior Enforcement Strategy is to target the criminal networks, employers and aliens that undermine our nation's laws and harm our communities. In addition, ICE is increasing its worksite enforcement efforts. A joint government and private sector initiative has been designed to increase employer compliance through outreach programs that will reduce vulnerabilities in the hiring process by partnering with employers to share best practices and encourage an environment of self-policing. This will allow ICE to focus on known and egregious violators of the law.

DHS has launched ICE-led Border Enforcement Security Task Forces (BEST) to combat illicit border activities domestically, to include human smuggling. BEST teams are comprised of personnel from a number of federal law enforcement agencies (ICE, CBP, ATF, FBI, DEA, U.S. Marshals Service), key state and local law enforcement agencies and U.S. Attorney's Office and local prosecutors. BEST also incorporates personnel from existing intelligence groups—involved in both collection and analysis—to help identify and disseminate information relating to smuggling organizations. BEST has been launched in Laredo and Tucson.

8. What are the top ten most porous areas of the border? How many Border Patrol agents do you believe it will take to gain operational control of these areas?

Response: The four states along the southwest border have the most illegal activity. The Border Patrol has divided the southwest border into three strategic enforcement corridors: California Corridor; Arizona/New Mexico Corridor; and Texas Corridor.

Operational control is not gained exclusively through additional staffing. Instead, operational control is achieved with the right mix of technology, infrastructure and staffing, including Border Patrol Agents and support personnel. Maintaining control will also require sufficient support from other agencies, such as detention and removal support from ICE as well as prosecution support from DOJ. In order to be responsive to your inquiry, estimates are provided below; however, CBP will work with the SBInet integrator (a contract is expected to be awarded in the fall) to determine the best solution for each particular environment. As a result, these staffing estimates could change in the future. It is also essential that other components within the government that are involved in prosecuting, investigating, and detain-

ing individuals who are arrested by CBP receive the resources necessary to meet the increased demand arising from additional Border Patrol staffing.

The California Corridor consists of San Diego and El Centro Sectors; it contains approximately 131 miles of border and has twenty-two percent of the southwest border's total manpower. This corridor accounts for eighteen percent of all apprehensions and six percent of narcotics seized. To gain operational control in the California Corridor, CBP Border Patrol will need approximately 800 additional agents, a twenty-five percent increase from current staffing levels. However, as noted above, this estimate is subject to change, based upon the work of the SBInet integrator.

The Arizona/New Mexico Corridor consists of Tucson, Yuma, and El Paso Sectors. It contains approximately 655 miles of border and has thirty-seven percent of the southwest border's total manpower. This corridor accounts for fifty-six percent of all apprehensions and fifty-six percent of narcotics seized. The sectors within this corridor are focus sectors and will receive priority resource deployments. To gain operational control in the Arizona/New Mexico Corridor, CBP Border Patrol will need approximately 1,400 additional agents, a thirty percent increase from current staffing levels (subject to change, as noted above).

The Texas Corridor consists of Marfa, Del Rio, Laredo, and Rio Grande Valley Sectors. It contains approximately 1,207 miles of border and has forty-one percent of the southwest border's total manpower. This corridor accounts for twenty-six percent of all apprehensions and thirty-eight percent of narcotics seized. To gain operational control in the Texas Corridor, CBP Border Patrol will need approximately 2,600 additional agents, a forty-three percent increase from current staffing levels (subject to change, as noted above).

Operational control of all corridors will also be dependent on additional deployments of technology and infrastructure along with an increase in agents.

9. The Federal Government regularly uses contract security guards to provide security at sensitive Federal sites around the country. **Given the inability to gain operational control of the border and the shortage of trained Federal law enforcement, would you consider utilizing private contractors to supplement the Border Patrol until we have a sufficient number of trained Border Patrol agents?**

Response: As an initial matter, CBP does not agree that operational control of the border is not achievable. CBP has taken and continues to take aggressive actions to control and protect the border, including increasing Federal personnel, using innovative technology, and using contractors to perform support activities.

You have asked whether CBP would consider using private security guards to supplement the Border Patrol. CBP cannot legally contract out Border Patrol Agent positions because Border Patrol Agents perform inherently governmental functions. As explained more fully below, current laws restrict those activities that may be performed by contractors.

CBP is required by the Federal Activities Inventory Reform (FAIR) Act of 1998 to perform an annual inventory of agency functions to identify employee functions that are inherently governmental. See Pub. L. No. 105-270 (Oct. 19, 1998). The report must be submitted to the Office of Management and Budget annually. The FAIR Act places limitations on what Federal agency functions can be performed by contractors. Specifically, the FAIR Act prohibits Federal agencies from contracting out those functions that are deemed "inherently governmental."

The FAIR Act defines an inherently governmental function as one "that is so intimately related to the public interest as to require performance by Federal Government employees." Pub. L. No. 105-270. The FAIR Act sets forth criteria for determining what functions are considered inherently governmental. A function is inherently governmental if it requires the individual performing the function to exercise "discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements." Pub. L. No. 105-270. Some functions considered inherently governmental include positions requiring interpretation and execution of Federal laws in order to "determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise" and "significantly affect the life, liberty, or property of private persons." Pub. L. No. 105-270.

The FAIR Act also provides guidance about those functions not considered inherently governmental functions. These functions, otherwise known as commercial functions, include information-gathering positions where the information is transmitted to Federal employees for use in performing inherently governmental functions. See Pub. L. No. 105-270. Commercial functions also include performance of

actions deemed “primarily ministerial and internal in nature.” Specific examples of this second category identified in the FAIR Act include, “*building security*, mail operations, operation of cafeterias, [and] housekeeping.” Pub. L. No. 105–270 (emphasis added).

In accordance with the FAIR Act, CBP’s Office of Finance coordinates, analyzes, and compiles the annual, agency-wide inventory of positions within CBP to identify those that involve performance of inherently governmental functions and those that are of a commercial nature. This inventory and associated analysis includes positions within the Border Patrol.

In June 2005, CBP specifically reviewed the FAIR Act classifications of CBP law enforcement functions. After reviewing the authorities vested in these individuals, CBP concluded that the functions performed by Border Patrol Agents, CBP Officers, and Air and Marine Officers have been properly classified as “inherently governmental” and therefore cannot be performed by contractors. It remains CBP’s position that the position of Border Patrol Agent is inherently governmental in that it requires performance of numerous activities that fall within the definition of that phrase under the FAIR Act.

Border Patrol Agents have authority delegated from the Secretary of the Department of Homeland Security to perform numerous inherently governmental law enforcement tasks including interrogating, boarding and searching vessels without a permit, patrolling to prevent entry of aliens, arresting for violations of any Federal law, carrying firearms, using force, and executing and serving orders, warrants, summonses and subpoenas. Border Patrol Agents interpret laws, exercise discretion, and make binding legal decisions that can affect the life, liberty, and property of the people they encounter along the border. The authority to perform these activities is set forth in the Immigration and Nationality Act, 8 U.S.C. § 1357 and 8 C.F.R. § 287.5. These activities fall squarely within the FAIR Act definition of inherently governmental and simply cannot be performed by security guards or other contractors. Although other types of work now performed in the border environment (such as building roads and fences, repairing vehicles, etc.) may be contracted out, the FAIR Act prohibits CBP from contracting out Border Patrol Agent functions.

10. I recently received the response to a letter I wrote to Chief Tom Walters, the Assistant Commissioner for Training and Development at CBP, regarding the use of private security guards to supplement the work of Border Patrol agents. The response letter raised a number of limitations to using private security guards, including liability, officer safety, a potential language barrier, and training.

a. Regarding liability, contractors providing security personnel to the military are required to have liability protection under the Defense Base Act. In addition, contractors could gain SAFETY Act coverage. **Would you please discuss why liability concerns would preclude the Border Patrol from utilizing private security guards to supplement the work of Border Patrol agents?**

b. Regarding safety, contractors currently train and deploy personnel to Iraq and Afghanistan on behalf of the military and the Department of State. Blackwater USA provides border patrol and safety training to the Afghan Border Patrol. Private security personnel also guard U.S. embassies in Baghdad and Kabul. **Would you please discuss why safety concerns cannot be overcome?**

c. Regarding a language barrier, Blackwater USA was recently asked to hire guards with Japanese speaking skills to protect a strategic site overseas. Unlike Japanese speakers, this country is full of Spanish speakers. **Would you please discuss why you believe that a potential language barrier should prevent the Border Patrol from exploring the use of private security guards?**

d. Regarding training, the letter also raised the concern that private security guards might not be adequately trained to be deployed in such a dangerous environment as the border. A statement of work on any contract, however, can set the standards for training, physical fitness, and other requirements. **If the Border Patrol would have the ability to specify the training requirements, why would this still be a concern?**

Response: As explained above, CBP is prohibited by statute from hiring hire private security guards to perform the work of Border Patrol Agents because Border Patrol Agents perform inherently governmental functions.

With regard to sub-questions 10a–10d, we regret that our previous response may not have clearly explained the primary threshold determination of inherently governmental work. Some of the issues identified are legitimate concerns and are taken

into account by an agency when it performs an OMB Circular A-76 feasibility study. If, despite concerns such as safety, training or oversight, a function is deemed feasible for competition, then the agency will take steps to mitigate those concerns via contractual requirements. In other words, when CBP has specific areas of concern, such as language proficiency or training, then CBP includes relevant requirements in the competition. However, as explained above, CBP first analyzes whether an activity is inherently governmental or commercial. If the function is classified as inherently governmental, then CBP does not perform a feasibility study.

Because the position of a Border Patrol Agent is classified as inherently governmental, CBP cannot use contract security guards to increase the law enforcement capability of the Border Patrol. However, CBP can use contract security guards and other contractors to perform administrative or support functions currently performed by Border Patrol Agents, provided that CBP's abides by the FAIR Act, OMB Circular A-76, the Competition in Contracting Act and the Federal Acquisition Regulation. In fact, contractors are already performing IT services and medical testing services that support the Border Patrol. There are also some activities that support the Border Patrol that CBP is analyzing and may be made available for competition in the future. Some of these activities include facilities repair and maintenance, motor vehicle maintenance, and support positions within the areas of program management, recruiting, and public relations.

While it may appear that using contractors to supplement the ranks of the agency's Border Patrol Agents is desirable, even where it is allowed under the FAIR Act, CBP must carefully analyze whether it is reasonable and feasible. OMB Circular A-76 requires that the agency perform extensive preliminary planning and identifies the steps to be taken in the preliminary planning process as part of the overall competitive sourcing process. This process is often referred to as conducting a feasibility study or business case study. The feasibility studies look expansively at the impact of competing a function. Specifically, they are used to evaluate, scope, and group functional "business units," test market interest in the function, and document the business case for whether to proceed with a competition of the function. A feasibility study of activities supporting the Border Patrol would consider factors such as potential liability, Federal employee/contractor employee safety, and contractor oversight. But, again, the inherently governmental nature of Border Patrol Agents precludes the use of contract security guards for duties that involve performing inherently governmental functions.

11. The President's Budget Request for Fiscal Year 2007 includes the addition of 375 operations support personnel for the Border Patrol.

a. Will CBP please discuss how these additional support personnel will be used?

Response: The support personnel will be employed in positions such as Law Enforcement Communications Assistants, Camera Operators, Vehicle Mechanics, Infrastructure Maintenance (fence repair, heavy equipment operation, truck drivers, etc.), Intelligence Analytical Support and Facilities Maintenance.

b. If the Border Patrol will be hiring 375 additional support personnel, how will this affect the number of Border Patrol agents deployed along the border? How many more Border Patrol agents will be able to perform the functions they were trained for, rather than performing administrative and other support functions?

Response: While the hiring of an additional 375 support personnel for the Border Patrol will redress a long-standing deficit, it will not have a *direct* effect on the number of Border Patrol Agents deployed to the border.

Although the agent workforce for the Border Patrol has tripled since the early 1990s, there have not been significant, matching increases in the support personnel that are required to support these additional agents. As a result, there has been a deficit in support personnel for a number of years. While, ultimately, the hiring of 375 additional support personnel will help to redress this long-standing deficit, in the more immediate term, it is the National Guard deployment that will allow agents to return to regular law enforcement duties. The new support employees are expected to come on board during the National Guard deployment so that, once this deployment concludes, Border Patrol Agents will not be required to return to these non-law enforcement functions.

c. Do support personnel require training? If so, what kind of training do they receive? What is the cost to provide this training? How long is the training? Who provides the training?

Response: Support personnel are selected using standard Federal personnel processes wherein the applicants are evaluated to determine which candidates are most qualified to perform the duties and responsibilities as described in the vacancy an-

nouncement. They do not attend a basic training curriculum prior to their employment.

Training for support personnel is usually minimal. Vehicle Mechanics, Infrastructure Maintenance Workers, and Intelligence Support are hired because of their existing respective skill sets. The majority of the training for newly hired support personnel will be on the job training. If specialized training (i.e. certifications) is required, it is usually for no longer than one week and takes place on site.

12. How many memorandums of understanding has the Department issued governing the relationship and responsibilities between ICE and CBP?

Response: The answer to your question is “For Official Use Only, Law Enforcement Sensitive.” Immigration and Customs Enforcement and Customs and Border Protection staff are available to provide a briefing on the issue in an appropriate venue upon request.

a. What metrics does CBP utilize to assess the effectiveness of MOUs and determine whether they need to be updated or amended?

Response: The response to the question depends on the specific MOU. s an example from a joint CBP & ICE MOU, CBP’s Office of Border Patrol (OBP) and ICE’s Office of Intelligence (OI) joint MOU has a clause which provides for review after six months, one year, two years, and then every succeeding two years. Five Sector Chiefs and Five ICE Special Agents in Charge constitute a review committee to make recommendations to CBP OBP and ICE OI. The review committee has determined that the joint MOU has been effective at the field level and no major revisions or changes to the Joint MOU are necessary. In another example, the CBP Office of Field Operations and ICE OI have another MOU that is reviewed twice annually at meetings of appropriate field leaders.

b. How does CBP translate MOUs into practice on the operational level in the field?

Response: The joint MOUs have been beneficial to both CBP and ICE in clarifying the roles and responsibilities of each agency. Since that time, headquarters and field personnel have worked hard to improve our partnership based upon the principles and direction outlined in the joint memoranda. As a result, the relationship between the two agencies has strengthened, roles and responsibilities are better understood and are more appropriately and efficiently executed, and field personnel within both agencies have effectively applied the principles set forth in each joint MOU in a spirit of cooperation. Cooperative efforts throughout the country have contributed to mission success and increased the efficiency and effectiveness of our enforcement efforts.

13. What is the status of that investigative pilot program at CBP and does it violate the basic premise of the MOU? What has been the Department’s response to the pilot program?

Response: In order to coordinate border enforcement activities, a joint working group was established with the U.S. Customs and Border Protection (CBP), Office of Field Operations (OFO), and the U.S. Immigration and Customs Enforcement (ICE), Office of Investigations (OI). The group was established in recognition that it is essential that officers from the CBP/ OFO and agents from the ICE/OI communicate effectively to harmonize enforcement efforts to protect the United States. The CBP/OFO—ICE/OI Working Group meets quarterly to promote ongoing dialogue and resolution of issues that impact our agencies. As part of this Working Group, on December 8, 2005, the first joint memorandum was drafted and issued to the field managers of both agencies. The memorandum outlined the guiding principles governing ongoing interactions between OFO and OI to assist in coordination and clarifying roles and responsibilities. The joint memorandum also made reference to the joint CBP/ICE investigative pilot whereby CBP Officers/Enforcement (CBPO/E) shadow ICE Special Agents. This joint memorandum was not intended to be used as a MOU, but rather to serve as a means of communicating the group’s work.

The written agreement between ICE and CBP was not outlined in the traditional “Memorandum of Understanding” (MOU) format referred to by the Subcommittee. Rather the coordination issues between ICE and CBP were agreed upon in a joint memorandum titled, “Guidance on Referral Coordination for U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement,” dated May 10, 2006. This agreement between ICE and CBP reaffirms that, with few exceptions, ICE is solely responsible for conducting investigations of CBP referrals and that CBP is primarily responsible for the operational and interdiction activities within the ports of entry. Subsequent to the issuance of this agreement, discussions held between ICE Office of Investigations (ICE OI) and CBP Office of Field Operations

revealed that CBP intended to initiate a pilot program that would assess the viability of instituting a future program where certain CBP officers would have authority to pursue the prosecution of drug smugglers who were discovered at ports of entry. This pilot project will be conducted with participation from ICE OI agents, and CBP's assessment will be limited solely to ports of entry. The Department of Homeland Security supports CBP and ICE's efforts in working together to strengthen an effective working partnership.

14. CBP currently controls the TECS (Treasury Enforcement Communications System) database which stores information on ICE case and investigative data. In FLEOA's (Federal Law Enforcement Officer's Association) testimony, they indicate that there are ongoing complaints from ICE agents regarding accessing certain database information that is controlled by CBP. Specifically, CBP is not entering information into TECS on their investigative targets leaving no way for ICE agents to be alerted to a CBP lead on a suspect.

• Can you please explain for us why CBP officers are not entering this valuable information into TECS? Are there plans underway for CBP to begin entering this information?

Response: CBP has policies in place to ensure coordination with ICE in a variety of investigative arenas. Through policy directives and duty musters, CBP Officers and Agents have been reminded of their responsibility to complete all required documentation of examinations in a timely manner. Additionally, CBP Officers coordinate with the local ICE Duty Agent anytime a potential terrorist or watchlisted person is identified in advance of arrival in the United States.

CBP believes that our Officers and Agents are entering valuable information into TECS in a timely manner. Through the use of one-day lookouts, secondary enforcement results and reports of suspicious or unusual activities encountered by CBP Officers and Agents, CBP-driven investigative leads are made available to ICE Special Agents in TECS.

Circumstances encountered by CBP that require investigative follow-up are referred directly to the ICE Duty Agent at the local Special Agent in Charge (SAC) or Resident Agent in Charge (RAC) office. Such circumstances may include, but are not limited to, the death of an alien, smuggled contraband, suspected smugglers, outbound seizures related to criminal export violations, and cross-border tunnels.

Finally, local notification thresholds and protocols that consider unique operational environments and resources have been developed between the Directors of Field Operations (DFOs), Chief Patrol Agents (CPAs) for the Border Patrol and ICE Office of Investigations' SACs.

QUESTIONS FROM THE HONORABLE BENNIE THOMPSON

1. We understand that in response to the Inspector General's recommendations, ICE & CBP developed a Coordinating Council. In the weeks leading up to this hearing, there has been a drumbeat of letters to my office from agents and officers in the field who feel disconnected and know nothing of your coordination efforts.

a) Who are represented among the members of that council? Are rank-and-file Border Patrol Agents, CBP inspectors, ICE investigators and ICE-DRO officers included?

Response: In late 2005, CBP and ICE, under Secretary Chertoff's direction, created the ICE-CBP Coordination Council. The Council meets regularly to coordinate and resolve operational and policy matters and to monitor implementation of ICE/CBP Memoranda of Understanding (MOA), among other things. The Council reports to the Secretary on outstanding issues, resolutions, and disagreements that require further direction or de-confliction. Co-chaired by the leaders of both agencies and the heads of the main operational divisions of ICE and CBP, Council Members include:

CBP	ICE
Commissioner	Assistant Secretary
Deputy Commissioner	Deputy Assistant Secretary
Assistant Commissioner, Office of Field Ops	Director Office of Investigations
Chief, Office of Border Patrol	Director, Office of Detention and Removal

CBP	ICE
Director, Office of Anti-Terrorism	Senior Policy Advisor
Director, Office of Policy and Planning	

While the Coordination Council was designed as a senior management-level entity, its deliberations and decisions are communicated to rank-and-file field officers/agents of both agencies through normal chain of command and information dissemination programs. One of the Coordination Council's main activities this year was issuing a joint CBP/ICE memo, signed May 10 by the heads of both agencies, providing Guidance on Coordination of Referrals to all frontline officers. Field level coordination avenues also have been established through the MOA mentioned above.

We take very seriously any indications of a lack of appropriate coordination between CBP and ICE personnel at any level. Upon receiving information regarding such problems, we would take immediate steps to remediate the issue and ensure it is resolved.

b) If not, how are CBP & ICE ensuring that the agreements reached on the Council level are effectively communicated at all levels of the Department?

Response: Although the Coordination Council was designed to facilitate collaborative efforts at the leadership level of both agencies, ICE and CBP field personnel remain informed about the activities and decisions of the Council. For example, in May 2006, the ICE Assistant Secretary and CBP Acting Commissioner issued guidance on referral coordination between ICE and CBP to CBP Chief Patrol Agents, CBP Directors of Field Operations, and ICE Special Agents in Charge, which was then disseminated to their field personnel. This memorandum addressed the support that ICE and CBP provide to each other in their enforcement efforts, including the proper referral of investigative leads. ICE and CBP field personnel were encouraged to find every feasible opportunity at the local level to promote broader cooperation and to jointly resolve at the field level issues that may arise—especially in the area of currency and monetary instruments, illegal drugs, commercial importation and exportation violations, national security matters, and gangs. Through such communication, ICE and CBP will continue to strengthen the effective working partnership that exists between the two agencies and their personnel at all levels.

2. We are going to have a hearing here next week in this Subcommittee on the development of human capital at the Department. **Within ICE, you have a few different types of agents and officers—each with their own unique function and training requirements, right?**

Response: The Office of Investigations employs Special Agents (criminal investigators) who use ICE's immigration and customs authorities to conduct complex criminal investigations. Programmatic areas are very diverse and specialized, requiring extensive technical and operational training to achieve full proficiency.

The Office of Detention and Removal Operations employs Deportation Officers who promote public safety and national security by providing for the control of all removable aliens and ensuring their departure from the United States. Deportation Officers have primary responsibility for overseeing the removal process, enforcing removal orders and investigating, locating, and arresting fugitive aliens. The sensitive and complex nature of immigration law enforcement requires comprehensive technical and operational training to achieve full proficiency.

Currently, both the Office of Investigations and the Office of Detention and Removal Operations employ Immigration Enforcement Agents (IEA). IEAs are responsible for the identification, processing, removal and escort of aliens who have been ordered removed from the United States. IEAs also oversee the transportation and custody of detained aliens.

a) In DRO, you have two law enforcement officers—the Immigration Enforcement Agent and the Deportation Officer, right?

Response: Yes, this is correct.

b) What sort of training do you require for your Deportation Officers?

Response: The entry-level training that must successfully be completed is the ICE Detention & Removal Basic Course (ICED). This 84-day course is considered "basic immigration law enforcement training" as defined in 8 CFR 287.1(g) and is normally provided to Immigration Enforcement Agents (IEAs).

The program includes instruction in Nationality and Immigration Law, Statutory Authority, Detention & Removal Operations, Arrest Techniques, Non-Deadly Force

Techniques, Firearms, Constitutional Law, Criminal Law, Conspiracy Law and Physical Conditioning.

The Deportation Officer Transition Training Program (DOTTP) supplies the necessary and critical Deportation Officer training that will assist an individual in transitioning into new duties as a Deportation Officer. The course includes an extensive presentation of 4th Amendment Law, Deportable Alien Control System (DACS), Treasury Enforcement Communications System (TECS), Post-Order Custody Release (POCR) and Alternatives to Detention. Other instruction includes Prosecution and Courtroom Procedures, Administrative Stays of Removal, Asylum and Refugees, Special Status Aliens, and an in-depth, DRO specific, Interviewing for Law Enforcement Officers lecture and lab. This course also discusses and demonstrates in depth the daily duties of a Deportation Officer, including Docket Control, Case Management, Travel Document requests, and alternate orders of removal.

c) Do they get any kind of immigration training or specialized law enforcement training?

Response: Yes, this training is considered “basic immigration law enforcement training” as defined in 8 CFR 287.1(g) and has replaced the “Immigration Officer Basic Training Course” specified in the statute. The courses are very specific to the officers’ respective positions as Immigration Enforcement Agents and Deportation Officers.

d) From your perspective, are there any circumstances where you would envision waiving these training requirements for a federal law enforcement officer?

Response: 8 CFR 287.5 and 287.8 require that Deportation Officers and Immigration Enforcement Agents complete basic immigration law enforcement training, or training substantially equivalent thereto as determined by the Assistant Secretary. In circumstances where there is equivalent training, a waiver must be processed.

3. The updated MOU between ICE and CBP reaffirmed that that ICE is the investigative arm for CBP and that CBP is “primarily responsible for the operational activities and interdictions within the ports of entry.” Yet in October 2004, CBP announced a pilot program to develop its own investigative capabilities with regard to criminal violations of federal customs and drug statutes.

• What is the status of the MOU? Has it been issued yet? If so, would you please provide a copy of that memo to the Subcommittee? If not, please tell the Committee the status of the memo.

Response: In order to coordinate border enforcement activities, a joint working group was established with the U.S. Customs and Border Protection (CBP), Office of Field Operations (OFO), and the U.S. Immigration and Customs Enforcement (ICE), Office of Investigations (OI). The group was established in recognition that it is essential that officers from the CBP/OFO and agents from the ICE/OI communicate effectively to harmonize enforcement efforts to protect the United States. The CBP/OFO—ICE/OI Working Group meets quarterly to promote ongoing dialogue and resolution of issues that impact our agencies. As part of this Working Group, on December 8, 2005, the first joint memorandum was drafted and issued to the field managers of both agencies. The memorandum outlined the guiding principles governing ongoing interactions between OFO and OI to assist in coordination and clarifying roles and responsibilities. The joint memorandum also made reference to the joint CBP/ICE investigative pilot whereby CBP Officers/Enforcement (CBPO/E) shadow ICE Special Agents. This joint memorandum was not intended to be used as a MOU, but rather to serve as a means of communicating the group’s work.

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land Security supports CBP and ICE's efforts in working together to strengthen an effective working partnership.

• What is the status of that investigative pilot program at CBP and does it violate the basic premise of the MOU? What has been the Department's response to the pilot program?

Response: As part of the Working Group discussion mentioned in the response immediately above, CBP and ICE agreed to a pilot program whereby certain CBP Officers/Enforcement (CBPO/E) shadow certain ICE Special Agents. The aim of the CBPO/E Pilot Program is to determine the impact of committing CBP resources to pursuing limited Title 21 prosecutions. OFO designated the Miami Field Office (MFO) as the lead for coordinating the development of field criteria for the CBPO–E Pilot Program.

As outlined in the memorandum, the ICE Office of Investigations supports the current scope of duties for the CBPO/Es, identifying and processing criminal prosecutions and administrative cases involving the Immigration and Nationality Act. The memorandum also reflects that it has been agreed that CBPO/Es will continue their current duties in enforcing the provisions of Titles 8 and 18 of the U.S. Code within the ports of entry.

4. At a February 13 Coordinating Council meeting, CBP and ICE agreed to issue a memo clarifying the referrals for investigation to ICE from CBP. The referral issue is said to be a major source of friction between the agencies is the existence of other legacy memorandums of understanding with Department of Justice entities that result in drug investigations being referred to DEA and FBI.

• What is the status of the MOU? Has it been issued yet? If so, would you please provide a copy of that memo to the Subcommittee? If not, please tell the Committee the status of the memo.

Response: The document is not an MOU. On May 10, 2006, the CBP Acting Commissioner and ICE Assistant Secretary signed a joint memo to the field, entitled Guidance on Referral Coordination for U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, as a reminder of existing referral agreements between CBP and ICE. A copy is attached.

5. How does CBP prioritize the cases for referral for investigations as relate to terrorism travel, human smuggling and trafficking, and drug activities?

Response: The Border Patrol, for the purpose of facilitating investigative efforts concerning criminal(s) and/or criminal organization(s), will notify ICE/OI as soon as possible of certain interdiction events or investigations. The Sector Chief Patrol Agents and Special Agents-in-Charge have developed local notification thresholds and protocols that consider their unique operational environments. The events that require notifications include: (1) death of an alien; (2) the homicide or serious physical injury of agents(s) when there is a smuggling nexus; (3) aliens held hostage; (4) seizures of cash over \$10,000; (5) seizures of narcotics to which the Drug Enforcement Administration (DEA) declines to respond; (6) seizures of commercial shipments of merchandise; (7) cross-border tunnels; (8) high profile cases and interdictions where significant media interest can reasonably be expected; (9) all outbound seizures related to criminal export violations; (10) interdictions that are discovered to have ties to any ICE/OI investigation (TECS hits, etc); and (11) arrests of aliens from special interest countries and special interest aliens. Border Patrol representatives at the National Targeting Center (NTC) will notify the ICE representative at the NTC of any arrest of an alien from a special interest country. The ICE representative will be responsible for contacting the appropriate ICE duty agent. Additionally, the local Border Patrol may also notify the local ICE/OI duty agent directly.

In situations involving drug seizures when the DEA declines prosecution, the Border Patrol may contact ICE/OI for further investigation; turn the narcotics over to state or local agencies; or, in a limited number of localities, present the case directly to the AUSA or District Attorney for prosecution. The procedures followed in each Sector will depend upon local laws, existing protocols, and resources.

In accordance with established policy, CBP must notify the FBI's Joint Terrorism Task Force (JTTF) regarding all aliens from special interest countries and special interest aliens apprehended by the Border Patrol. The Border Patrol also contacts the National Targeting Center (NTC), which notifies the ICE representative at the NTC. These procedures have been in place for some time and they are working very effectively.

Arrests for some violations are referred to other Federal agencies because of existing MOUs. Both Border Patrol Agents and ICE agents are delegated Title 21

(Drugs) authority from the Drug Enforcement Administration in accordance with the Memorandum of Understandings with the DEA. The ATF delegates Title 18 USC 922 (to arrest aliens in possession of firearms) to both Border Patrol and ICE. These delegations allow both agencies to present cases for prosecution (on behalf of the DEA and ATF) to the USAO. In cases that involve multiple violations such as currency, drugs, and alien smuggling, the Border Patrol will notify both the DEA and ICE. The Investigators from these two agencies will then coordinate the investigation or consult with the USAO for the best course of action/prosecution.

CBP Office of Field Operations does not prioritize referrals to ICE. ICE provides each port of entry with a duty agent roster. When the CBP officers at a port seize any narcotics or other contraband, undeclared currency, or commercial merchandise, the officers will notify the ICE duty agent. The ICE duty agent will advise the CBP Officers on a decision as to whether ICE will investigate. When CBP Officers at any port encounter someone suspected of being connected to terrorism, the Officers make three notifications—to the local Joint Terrorism Task Force (JTTF), the ICE duty agent and the National Targeting Center (NTC). When CBP Officers at a port encounter instances of human trafficking, they notify the ICE duty agent. The difference between this situation and those described above is that CBP/OFO has a class of Enforcement Officers who will take certain kinds of human smuggling cases before the U.S. Attorney in order to seek prosecution. However, they notify ICE in all cases. ICE will generally pursue the bigger human smuggling conspiracy cases.

6. In the last fiscal year, how many referrals were made by CBP to ICE?

Response: During FY 2005, CBP Office of Field Operations referred 20,756 cases to ICE. Among them are cases that originated with the seizure of drugs, currency and property. OFO refers all such cases to ICE. ICE then determines whether it is appropriate to refer a case to a third agency.

The Border Patrol does not use the term “referral.” Pursuant to standing MOUs, the Border Patrol notifies the appropriate agency or agencies in the event of an arrest/seizure/incident. This notification is made, orally, to the ICE, DEA, FBI, JTTF, or other Federal, State, or local office, as appropriate, depending on the seizure or arrest. This notification is noted in the Border Patrol agent’s case report, which is in text format in the IDENT/ENFORCE system. For Border Patrol, ICE only records in the TECS System the number of investigations that ICE opens (not the total number of notifications). In complex cases, the Border Patrol may notify several agencies that may have enforcement responsibilities for a particular case. The participating agencies will determine, in conjunction with the U.S. Attorney, who has the investigative lead, and the appropriate course of action.

The Border Patrol does not have an automated standardized collection process that permits the tracking of “referrals” to ICE or other agencies. The Border Patrol does, however, track the total number of “seizure incidents” (e.g., seizures of property, drugs, cash, vehicles, etc.).

a) How many were made by CBP to DEA?

Response: While CBP Office of Field Operations does not refer cases to DEA, the Border Patrol does, pursuant to a standing MOU. Currently, the Border Patrol does not have an automated standardized collection process that would permit it to track the number of “referrals” to DEA. The Border Patrol does, however, track the total number of “seizure incidents” (e.g., seizures of property, drugs, cash, vehicles, etc.). In FY 2005, 3,773 seizure incidents were transferred over to (TOT) to DEA.

b) How many were made by CBP to FBI?

Response: CBP Office of Field Operations does not refer cases to the FBI. Cases are first referred to ICE, which then decides whether or not to refer the case to FBI.

Currently, the Border Patrol does not have an automated standardized collection process that would permit it to track the number of referrals to the FBI. The Border Patrol notifies the local FBI/JTTF, as well as the National Targeting Center (NTC), on all suspected terrorist or Special Interest Alien (SIA) encounters. The NTC notifies the on-duty ICE representative at the NTC. The referral is noted in the Border Patrol agent’s case report, which is in text format, in the IDENT/ENFORCE system.